ORIGINAL

LIBRARY OF CONGRESS

UNITED STATES COPYRIGHT ROYALTY JUDGES

The Library of Congress

----------X

IN THE MATTER OF:)

) Docket No.

DETERMINATION OF CABLE) 14-CRB-0010-CD

ROYALTY FUNDS) (2010-2013)

----------X

Pages: 735 through 976

Place: Washington, D.C.

Date: February 21, 2018

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 206
Washington, D.C. 20005
(202) 628-4888
contracts@hrccourtreporters.com

UNITED STATES COPYRIGHT ROYALTY JUDGES

The Library of Congress

----------X

IN THE MATTER OF:)

) Docket No.

DETERMINATION OF CABLE) 14-CRB-0010-CD

ROYALTY FUNDS) (2010-2013)

----------X

BEFORE: THE HONORABLE SUZANNE BARNETT

THE HONORABLE JESSE M. FEDER

THE HONORABLE DAVID R. STRICKLER

Library of Congress

Madison Building

101 Independence Avenue, S.E.

Washington, D.C.

February 21, 2018

9:18 a.m.

VOLUME IV

Reported by: Joe W. Strickland, RPR, CRR, CRC
Karen Brynteson, RMR, CRR, FAPR

A P P E A R A N C E S:

On behalf of Joint Sports Claimants:

ROBERT ALAN GARRETT, ESQ.
M. SEAN LAANE, ESQ.
DANIEL A. CANTOR, ESQ.
MICHAEL KIENTZLE, ESQ.
BRYAN L. ADKINS, ESQ.
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, N.W.
Washington, D.C. 20001
202-942-5000

IAIN R. McPHIE, ESQ.
Squire Patton Boggs LLP
2500 M Street, N.W.
Washington, D.C. 20037
202-626-6688

On behalf of Commercial Television Claimants:

JOHN I. STEWART, Jr., ESQ.
DAVID ERVIN, ESQ.
ANN MACE, ESQ.
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-624-2685

APPEARANCES (Continued):

On behalf of Program Suppliers:

GREGORY O. OLANIRAN, ESQ.
LUCY HOLMES PLOVNICK, ESQ.
ALESHA M. DOMINIQUE, ESQ.
ALBINA GASANBEKOVA, ESQ.
DIMA BUDRON, ESQ.
Mitchell Silberberg & Knupp LLP
1818 N Street, N.W., 8th Floor
Washington, D.C. 20036
202-355-7917

On behalf of Public Television Claimants:

RONALD G. DOVE, Jr., ESQ.
DUSTIN CHO, ESQ.
ROBERT N. HUNZIKER, JR., ESQ.
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, D.C. 20001
202-662-4956

APPEARANCES (Continued):

On behalf of Canadian Claimants Group:

L. KENDALL SATTERFIELD, ESQ.
Satterfield PLLC
1629 K Street, N.W., Suite 300
Washington, D.C. 20006
202-355-6432

VICTOR J. COSENTINO, ESQ.
Larson & Gaston, LLP
200 S. Los Robles Avenue, Suite 530
Pasadena, CA 91101
626-795-6001

On behalf of Settling Devotional Claimants:

ARNOLD P. LUTZKER, ESQ.
BENJAMIN STERNBERG, ESQ.
Lutzker & Lutzker LLP
1233 20th Street, N.W., Suite 703
Washington, D.C. 20036
202-408-7600

APPEARANCES (Continued):

On behalf of Settling Devotional Claimants:

MATTHEW J. MacLEAN, ESQ.
MICHAEL A. WARLEY, ESQ.
JESSICA T. NYMAN, ESQ.
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, N.W.
Washington, D.C. 20036
202-663-8183

P R O C E E D I N G S

(9:18 a.m.)

JUDGE BARNETT: We are wired for sound today. These mics are live, hot mics for us, so we are going to try to remember to turn them off. But if you hear anything coming -- any side-bar chatter up here that you don't think you want to hear, or that we don't want you to hear, please just, you know, let us know that we have hot mics in front of us. We are not reality TV stars, so we are not aware that we have hot mics.

The first order of business this morning is to deal with what we have deemed to be the Sports Claimants' Cross Motion. Let's take it from the top.

The Program Suppliers filed a Third Errata -- and let me just take it from before the top. Dr. Gray filed written Direct Testimony in December of 2016. There was a corrected or amended version on March 9th of 2017, and an additional version amended and corrected again on April 3rd, 2017.

The Third Errata, what is called the Third Errata, contained testimony from Dr. Gray

dated January 22nd, 2018.

On motion of the Devotional Claimants, the Judges struck the Third Errata. We don't actually ever remove anything from the record, but the order is there on the record and we will not consider the information that is in the Third Errata as far as Dr. Gray's testimony is concerned.

Dr. Gray has acknowledged that there was a data error and all of the other parties are aware that he used erroneous data, or incomplete data, in developing his three prior versions of Direct Testimony.

And several of the parties here have pointed out to us, in the past -- in past proceedings when parties have said there is an error in our data, we have said we want to have up-to-date and correct data and we have granted the offering party's motion to do those corrections.

In this case, the Program Suppliers filed that Third Errata, the Sports Claimants moved to strike it, and for all of the reasons advanced by the Sports Claimants, Judges granted that motion.

The bottom line is the January 22nd, 2018, version of Dr. Gray's testimony will not be considered. The fact of him filing that correction can be in the record. He can be questioned about the fact. I mean, he's acknowledged that he had incorrect or incomplete data and that's not a secret. It's already in the record, based on all the conversations we have had up to this point.

The fact of the Third Errata is not off limits; the content of the Third Errata is off limits. The calculations that took place or that were included in that Third Errata version are off -- are not permitted.

The Sports Claimants are now moving essentially to require the Program Suppliers to do an additional analysis using the data that was omitted, because when we struck the January 22nd errata, we struck the whole thing. We struck the additional analysis, we struck the additional data, we struck the whole thing.

That motion is denied. What is in the record is available for direct examination and cross-examination. You have all employed very, very smart experts who know how to look at

material and to analyze and critique it. What is in the record is in the record. The Judges will hear and weigh evidence that is presented to them and they will afford whatever weight is appropriate to the evidence that is presented to them. So be it.

Anything further from the Bench? Judge Feder?

(Judge Barnett and Judge Feder confer.)

JUDGE BARNETT: The April 3rd version of the Program Suppliers' written Direct Testimony is the most recent thing we have accepted. All three of those prior versions are filed and what each party chooses to present or question about is up to each party, based on your own trial tactics and strategies.

Mr. Olaniran, you look perplexed.

MR. OLANIRAN: I just want to get some clarification on what is fair game for cross-examination. I understand the ruling is that the Third Errata, both the content and the calculations, are off limits. But then I was a little confused about whether that is also fair game for cross-examination or not.

JUDGE BARNETT: No. No.

MR. OLANIRAN: Okay.

JUDGE BARNETT: Anyone can examine or cross-examine Dr. Gray about his acknowledged data error, but not about what effect that might have on any of his calculations, or what they did with them, or anything in that Third Errata, because there were other approaches and analyses that he did in the Third Errata that are not permissible.

(Judges conferring privately.)

JUDGE BARNETT: None of your problems are easy, just so you know. It is not your imagination.

Mr. MacLean?

MR. MACLEAN: Your Honor, just a very quick clarification. I believe that the last non-stricken version of Dr. Gray's testimony is dated November 2nd. It was November of 2017, not April of 2016.

MS. PLOVNICK: Your Honor, that was his Rebuttal.

JUDGE BARNETT: I have two dates for Rebuttal. I must have missed the November '17 Rebuttal. I have September and then I have

February 12th of this year.

MS. PLOVNICK: There was an additional one in November.

JUDGE BARNETT: In November?

MR. MACLEAN: I will accept that. I just wanted to make sure I knew which one to look at.

JUDGE BARNETT: Okay. And I haven't heard any objections to the February amended rebuttals, because I think those are all based on some late-produced evidence.

MR. OLANIRAN: One more hopefully not too complicated question. With respect to the Rebuttal testimony, their direct and the Third Errata, those two would not be admissible then?

JUDGE BARNETT: There would be no reason to present that evidence, because the Third Errata is not going to be -- the decks of the Third Errata are not going to be presented.

MR. OLANIRAN: Thank you.

JUDGE BARNETT: Mr. Garrett?

MR. GARRETT: Yes, ma'am, just a couple of points here. On the February rebuttals, some of those were in fact addressed to Dr. Gray's Third Errata. So we will need to

switch those out, if I understand your Honor's ruling.

JUDGE BARNETT: I don't know if "switch those out" is -- you will have to cherry-pick what's in them. But we don't want -- we're not accepting any additional filings at this point. If they address something that's in the Third Errata, then we just ignore it or you just ignore it in your examination of the witness.

MR. GARRETT: And one other point of clarification, your Honor. The motion that the seven Devotional Claimants filed referred broadly to the Errata and moved to strike. I understood that to mean both the Third Errata to Dr. Gray's original testimony and the Second Errata to his written Rebuttal testimony. Were both of those stricken or just the Third Errata? Because the Second Errata contains the calculations -- revises the calculations based upon the new data.

JUDGE BARNETT: We only ruled on the Third Errata to the written Direct Testimony. We believed that was what was in front of us.

MR. GARRETT: The Second Errata does

contain revised calculations, renewed calculations based upon that Third Errata data.

JUDGE BARNETT: The Second Errata --

MR. GARRETT: To his written Rebuttal testimony.

JUDGE BARNETT: To the Rebuttal testimony? And what is the date on that?

MR. GARRETT: They were filed at exactly the same time, your Honor.

JUDGE BARNETT: Oh, that Third Errata was also the Second Errata to the Rebuttal.

MR. GARRETT: It was his Third Errata to the written Rebuttal testimony of Dr. Gray and the Second Errata to the written Rebuttal testimony of Dr. Gray. The primary change in the Second Errata to the written Rebuttal testimony was to change the various calculations so they would be consistent with the Third Errata.

JUDGE BARNETT: Well, to the extent those calculations, that analysis, those data are in the Second Errata to the written Rebuttal testimony, they are part and parcel of what we have chosen to disregard in this proceeding. It can't come in through the back

door or the side door.

MR. GARRETT: And as I understand it, your Honor, it is clear that our witness will not be able to testify as to the effect of the data and changes Dr. Gray made. It is something that we can only raise on cross-examination of Dr. Gray?

JUDGE BARNETT: I'm sorry; you're confusing me. Your witnesses can't talk about something that we aren't allowing in the record. I mean they can't critique something in Dr. Gray's analysis that is not in the record.

MR. GARRETT: I understand. Thank you, your Honor.

JUDGE BARNETT: I think we are continuing to take Dr. Mathiowetz. You had only eight minutes, Mr. Cho.

MR. CHO: That's right.

JUDGE BARNETT: Dr. Mathiowetz, you may return to the witness stand and you remain under oath.

Whereupon--

NANCY MATHIOWETZ,

a witness, called for examination, having previously

been duly sworn, was examined and testified further as follows:

MR. CHO: Your Honor, before we begin I would like to move the admission of Exhibit 3011, which is the Reference Guide on Survey Research that Dr. Mathiowetz has testified about, and I believe all the parties have consented to its admission.

JUDGE BARNETT: Any objection?

MR. GARRETT: No objection, your Honor.

JUDGE BARNETT: Thank you. Exhibit 3011 is admitted.

(Exhibit Number 3011 was marked and received into evidence.)

CROSS-EXAMINATION - Resumed

BY MR. CHO:

Q. Good morning, Dr. Mathiowetz.

A. Good morning, Mr. Cho.

Q. I would like to pick up where we left off yesterday about the Horowitz surveys. In particular, I wanted to talk about the Horowitz surveys of systems that carried only Public Television on a distant basis.

A. I was hoping you were going to go back

to the homework assignment that you gave me.

Q. Certainly, we can go there.

A. Can we go back to the last thing you had in front of us on the visual that was a list of the problems that I had enumerated with respect to the Horowitz.

Q. Yes. Is this the slide?

A. Yes.

Q. Okay.

A. You can ask the question. I'll wait.

JUDGE BARNETT: I think that's always the best way.

THE WITNESS: I write questions, though, for my life, so...

BY MR. CHO:

Q. Fair point. So do you have any reason to believe that any of the flaws that you've identified in this paragraph 51 of Exhibit 1007 would have biased the Horowitz survey results in favor of Public Television?

A. You asked me this question yesterday, and with the luxury of a little time to go back and review both my own written Rebuttal testimony, as well as Mr. Trautman's, there is a part of Mr. Trautman's analysis that speaks

directly to this last bullet that we talked about with respect to the concentration of burden related to particular respondents having to report for numerous cable systems.

If we go back and look at Mr. Trautman's analysis -- I believe it's on page 43 of his written Rebuttal testimony, he talks about one particular respondent who reported for multiple systems and was an outlier with respect to their valuation for Public Television.

And in Mr. Trautman's analysis, he showed that when the sensitivity of that outlier -- and I believe he showed that when you remove that person's data, the valuation for Public Television moves by 5 percentage points. That is, it drops by 5 percentage points just related to that one individual's response because of two factors: They're an outlier, and because they contributed a large amount of data due to the way that Horowitz collected their data where a single respondent reported for multiple cable systems.

Q. Dr. Mathiowetz, did you identify that particular criticism anywhere in your report?

A. Not the calculation. But clearly in this bullet I'm talking about the issues related to the excessive burden. And we talked in my Direct Testimony yesterday about several slides about what that concentration does and how one has to be sensitive to that analysis.

But no, I didn't present those particular estimates, because Mr. Trautman had already covered that point.

Q. So, Dr. Mathiowetz, do you agree with Mr. Trautman that that system is an outlier?

A. Well, once again, right, you're looking -- so as I talked about yesterday, you are looking at a data collection approach in the Horowitz data that has a small number of respondents sometimes reporting for multiple systems.

As someone who collects survey data and does estimation, you want to be sensitive to, hmm, I don't want any one person to pull a regression line or pull an estimate just because of the nature of their response. So why don't you look for outliers?

What's an outlier; right? You look across the data. That is a subjective

viewpoint that you have to make. In Mr. Trautman's analysis, he looked and this one respondent's valuation for Public Television was four times the mean for everybody else in the Horowitz data. He labeled that an outlier.

So I'm just reporting back to you; right? Different people can decide what an outlier is, but my point that I wanted to make sure that we came back to is that because of the concentration of data in the Horowitz -- and because of another case that I talked about yesterday which didn't have to do with Public Television, but had to do with the evaluation of syndicated shows; right -- any one person who is reporting, for instance, for 10, 20, 30, 40 systems, can have a big impact on the data. And if you are going to bring those data to Court, you have to be sensitive to the fact that, hmm, do I want one person who has contributed a lot to this dataset to move a regression line or to move a particular valuation percentage?

JUDGE STRICKLER: Excuse me. Good morning, Professor.

THE WITNESS: Good morning.

JUDGE STRICKLER: Is there any concern that you might have that there may be a reason why that one person is responsible for so many different cable systems -- we don't know the answer to this, of course -- that they may have superior knowledge as to what is considered valuable, which is why they are entrusted with responding or having responsibility across a number of systems? Since we don't know anything at all about the person, what looks like a statistical outlier may actually be someone who is somewhat differentiated from others who respond with greater knowledge, certainly within the marketplace or the industry, which is why they were entrusted with responding and having responsibility for many cable systems.

THE WITNESS: Certainly one has to consider that perhaps those particular systems were unique with respect to their valuation of Public Television. I'm not saying that that person was wrong or right. I'm not saying that they were inaccurate.

What I'm trying to put before the court is the need to be aware of the influence

of a particular respondent when one respondent is not just reporting for a single cable system, which is what you typically see in datasets, but where one respondent here may be contributing 10 or 20 or almost 30 percent to the dataset.

So I can't, of course, sitting here today, say that that person is right or wrong. But I do think it's important to be aware of the differences between the Bortz and the Horowitz data collection effort where you can see this influence of a single individual in the Horowitz data and where you don't have that impact in the Bortz data.

JUDGE STRICKLER: Given that we're aware of it -- you have made us quite aware of it, that's terrific -- what are we to make of it, in your professional opinion?

THE WITNESS: Well, once again, it is a concern I have with the way that Horowitz has collected the data. You have an alternative data source that isn't plagued by that particular problem and that is the data that was collected by Bortz.

JUDGE STRICKLER: Well, when you call

it a problem, that sort of assumes the conclusion. What I'm trying to get at is do we have enough information to know it's a problem? It is certainly a statistical outlier, but if we don't know anything about the individual or the cable systems that this individual represents, how are we supposed to know it is a problem as opposed to valuable information.

THE WITNESS: So sitting here today, I can't address it. I could certainly go back to the data and try to answer your question, your Honor.

JUDGE STRICKLER: But there is nothing in your report that addresses whether we should consider that information as a statistical outlier to be given less weight, or unique information, because this particular individual is not homogeneous with others who responded who didn't represent as many cable systems?

THE WITNESS: So in my written Rebuttal testimony, I offer an alternative example that has to do with syndicated shows valuation, rather than Public Television. And once again, looked to see, you know, what that impact is of a particular respondent.

But, yes, I cannot -- I'd have to go back and do further analysis in order to make that final determination that you're asking for.

JUDGE STRICKLER: Thank you.

BY MR. CHO:

Q. Dr. Mathiowetz, I guess I wasn't quite clear. Is it your subjective opinion -- I think you said it was a subjective opinion as to whether it is an outlier or not; is that right?

A. What is an outlier? There are statistical rules for thinking about what is an outlier; right? So different statisticians bring different rules to the table and say when you have observations that fall more than three standard deviations away from the mean -- there are different standards. There is not one set of standards used by statisticians.

So when I'm looking at a dataset, I am looking to see where there are data that are different with respect to thinking about two or three or four standard deviations away from the mean of everybody else. That is subjective.

If you put -- when Mr. Harvey comes on

the stand, or any other statistician, they all have different rules. And, once again, those rules are based on what -- you know, different approaches to datasets and different ways to think about cleaning the data, different ways to think about sensitivity analysis.

JUDGE FEDER: Professor, this particular data point, how many standard deviations does it fall from the mean?

THE WITNESS: So once again I'm citing Mr. Trautman's analysis. So I don't know what he used as a cut point. I believe he said it was four times the value, but I'd have to go back -- do we have Mr. Trautman's written Rebuttal testimony that I could just reference to make sure that I'm quoting him accurately.

MR. CHO: May I approach the witness?

JUDGE BARNETT: Sure.

THE WITNESS: Thank you.

(Mr. Cho proffers document to Witness.)

THE WITNESS: So if you look on page 43 of Mr. Trautman's written Rebuttal testimony, he talks about the single respondent accounted -- he or she alone accounted for

between 15 and 23 percent of the responses to the Horowitz survey. Moreover, the allocations to the PTV category for this single MSO average over 45 percent, a level that is more than four times the median Horowitz PTV allocation of 10 percent and is a clear outlier in relation to the allocations typically assigned to the category.

So his definition there was four times the median, which is a very generous consideration of an outlier.

BY MR. CHO:

Q. In your opinion, is it appropriate to look at how many multiples of the median a data point falls in to determine whether or not it is an outlier?

A. It is a different approach than looking at number of standard deviations, but it's certainly one that is used.

Q. Is it only used in the context of normal distributions, or is it used in the context of other types of distributions of data, as well?

A. Well, that is why the standard deviations are typically used, rather than just

looking at four times a particular data point.

Q. Is it true that if a dataset were actually distributed not normally, or that it had high variance, that four times the median might well be within normal?

A. No, not four times of the median. You might have variability that is four times within the mean, but not four times within the median.

Q. Well, I can give an example. Let's say there were some cable systems that only carried Public Television. How much would those systems have awarded to Public Television on a relative value scale for all of the programming that they carried?

A. You mean theoretically?

Q. Yes.

A. Theoretically, one would think they would report 100 percent.

Q. Is it your opinion that that would be an outlier, since it would be four times the median?

A. No.

Q. So in your opinion do you have any basis to believe that the system that

Mr. Trautman identified is an outlier in this dataset?

A. No, once again I'm relying on his assessment and I did not look at this particular case specifically. But I just wanted, you know -- you asked me a question yesterday. I wanted to make sure that we circled back and pointed to this particular analysis.

Q. I appreciate that. I just want to be clear for the record, but you are not aware of any basis yourself to identify any particular outlier in this dataset with respect to Public Television that should be excluded?

A. No, but I do think that -- I think the question you posed to me yesterday was whether any of the bullet points had a potential influence -- the bullet points that I criticized Horowitz, had a potential impact on PTV valuation. That last point, once again I did note yesterday that I haven't looked specifically with respect to PTV. But that last point is one that is of issue with respect to the entire Horowitz dataset and one that needs to be considered, regardless of which

program category you are looking at.

Q. Now, this isn't exactly like some surveys where you are trying to capture a true value in the population and you are sampling only a very small fraction of that population; right? In this case, in fact, in the largest stratum, Mr. Trautman surveyed 100 percent -- or attempted to survey 100 percent of the cable systems in that largest stratum; isn't that right?

A. They are -- 100 percent are included. Now we are switching back to the Bortz survey, so 100 percent are sampled in that stratum, but not 100 percent participate.

Q. And it is also true for the Horowitz survey, isn't it?

A. That's true.

Q. So when they are doing that, aren't they capturing variation in the amount of carriage, for example, of Public Television among those systems in that largest stratum?

I can rephrase, if you would like.

A. Sorry, I --

Q. Is it possible that some systems in that largest stratum carry a lot of Public

Television and might have a very different valuation of Public Television than other systems in that stratum?

A. Why are we focusing just on the four stratum? I mean, there can be variability in the valuation of Public Television for any system, regardless of which stratum they were sampled from.

Q. Yes, that is true. But just sticking with the four stratum for now, because both Horowitz and Bortz tried to survey all of those systems, isn't it true that, you know, some of those systems might have valued Public Television more than other systems and carried more Public Television systems than other systems in the same stratum?

A. Sure. There could be variation across -- within even the four stratum, yes.

Q. And isn't it true that Mr. Trautman and Mr. Horowitz were both trying to capture that variation in the stratum when they conducted their survey?

A. Well, the nature of the constant sum question, regardless of which stratum we are talking about, is trying to capture and measure

people's valuations, whether it is for Public Television or any of the other program categories. So I don't quite understand your question.

Q. I guess what I'm trying to get at is Mr. Trautman and Mr. Horowitz weren't trying to find what the median cable system believed the value of Public Television was, were they? They were trying to determine what all of the cable operators valued Public Television and the other categories at for each of their systems; isn't that right?

A. Well, they are trying to determine -- I mean, the estimate that is produced is an average across all of the systems within the stratum and then across those four strata. Right? They weren't producing a median, but rather more than of a mean.

Q. So if one system actually, you know, was a very large system or represented a lot of data and a lot of subscribers, is that a reason to discard that information?

A. No, and I didn't suggest that we discard it. The point that I'm trying to drive home is that between the Horowitz survey and

the Bortz survey we have very different levels of responding burden. So if we just think about what you just laid out, both of them in the fourth stratum are trying to interview all of the systems in that stratum; right? So theoretically they are going after -- except for slightly defining the strata differently, they are theoretically going over the same respondents.

Now, you have two very different approaches to data collection. One used by Horowitz that asks the respondent to report for multiple systems. So you have non-independence of the observations in this dataset where you have one respondent potentially reporting for multiple systems.

In contrast, when you look at the Bortz data collection, going after that same population in that fourth strata, you have a data collection approach where the respondent only has to report for a single cable system at a time. And if that executive was responsible for reporting for more than one cable system, they were interviewed -- the data were collected separately.

So in other words, they had a chance to value each of those cable systems separately. Whereas in the Horowitz survey, when they were being queried about the same distant signals for multiple cable systems, it was one interview.

Okay. Why is that -- so we have a tension here. I'm not saying that the respondents in the Horowitz survey are wrong if they valued it at 100 percent. I'm asking us to be sensitive to the fact that we have a very different data collection methodology that potentially impacts this dataset. And we can see that impact when we do sensitivity analysis.

So Mr. Trautman's done a piece of sensitivity analysis. I've done some looking at a different program category. All that is is trying to say, you know, these two different methodologies going after the very same respondents result in differences with respect to the influence of any one respondent.

Q. Let's say hypothetically, just hypothetically, that the decisions at that particular cable operator were made an a very

high level as to decide which programs -- I mean, which channels to carry and which distant signals to carry. And the person who made the decision actually decided for all of those different systems him or herself.

Now, in that scenario, do you think it is wrong as a matter of survey methodology to ask that person about the valuations of those different categories of programming at different distant signals, or do you think that would be an appropriate methodology?

A. My concern isn't whether they have picked the wrong or the right respondent, although theoretically Bortz started from the bottom and Horowitz started at the top. One would have hoped that we had gotten to the same level, but obviously they didn't.

My concern is think about what the Horowitz respondent had to do in a single interview. Remember, they're not being asked to report just about the sample cases. They're being asked to report about the universe for which they have oversight of cable systems.

Now they're being reviewed, all of the distant signals for those cable systems, and in

a single interview they are being asked to evaluate those program categories.

So if we think -- I mean, that means they have to give a single valuation, even if they think, Geez -- I won't take Public Television, but just take WGN -- WGN in the Midwest might be more important than WGN would be out in California, but I have to do all WGN in a single interview. So it's an integrated average.

It's a very different response task than what you're asking the respondents to do in Horowitz -- I mean in Bortz; sorry. The Horowitz task is much greater than that in Bortz. Sorry.

Q. But in my hypothetical scenario, wouldn't that be essentially the job of the person who is answering the survey on a day-to-day basis to take into account all of those different variables and all of those different factors across all the systems they are responsible for?

A. Certainly that would be their job. But I assume that when -- once again, I'm not a cable system executive. So I don't know when

they go out and purchase these signals if they are thinking about the spread of the country; whether they purchase and think about California separately than the East Coast, even though they all look alike with respect to the distant signals they are carrying.

Q. I believe you said a moment ago that there is non-independence between the responses to the Horowitz survey when a respondent is actually answering for multiple systems; is that right?

A. I did say that, yes.

Q. Is that also true for respondents to the Bortz survey who are answering for multiple systems, that there is non-independence between their answers?

A. So once again, the magnitude of that non-independence is many factors greater in Horowitz than it is in Bortz.

Q. Do you know if Mr. Trautman took into account that non-independence when he calculated his confidence interval?

A. I believe neither Mr. Trautman nor Dr. Frankel took into account that non-independence.

JUDGE BARNETT: The Reporter didn't get your question.

JUDGE FEDER: Should they have?

THE WITNESS: In my viewpoint, they should have. And why is that important? The confidence intervals are a function of clustering or non-independence. And that's, once again, where the magnitude of that clustering in Horowitz, where you have an average of responding for eight or nine systems, has a much greater impact on the confidence intervals you would see from Horowitz, if it was computed correctly, than the impact on the Bortz confidence intervals if you took that into account. Because there you see only executives answering for about 2.2 systems per executive.

BY MR. CHO:

Q. So I believe that you actually offered your own confidence intervals for some of the studies submitted by Program Suppliers, but you did not submit any corrected confidence intervals for the Bortz survey; is that correct?

A. That's correct.

Q. And you're not aware of anything in the record that would suggest what the accurate confidence intervals would be for the Bortz survey?

A. No, I do not believe there is one in the record.

Q. And just to sort of clarify another aspect of that, even if those confidence intervals were corrected for the Bortz survey, that would not take into account any bias that may be attributable to the omission of PTV-only systems; is that right?

A. Right. The confidence intervals that would be based on the data that were collected, as Mr. Trautman has clearly said, the 100 percent PTV were not included in their interviews.

Q. Thank you. Okay. So I'm going to return to my outline, unless you have anything else to add.

So unlike the Bortz surveys, the Horowitz interviewers actually called systems that carried only Public Television signals; isn't that right?

A. That is correct.

Q. And the Horowitz interviewers asked those respondents to estimate the relative value of all of the programs broadcast on those PBS stations; isn't that right?

A. They did, yes.

Q. Now, in your opinion, was that question confusing?

A. To me, looking at that question and asking someone to make a relative valuation of one object is like: Okay, you're telling me it has to sum to 100 percent, it has got to be 100 percent.

So when you ask that question and they only have a single distant signal, I wonder what those respondents thought they should be thinking about. And, you know, I didn't get to debrief those respondents. The data that is produced by Horowitz suggests that many respondents didn't report 100 percent for that category. So they may have not understood the task when asked that.

Q. I believe you told Judge Feder yesterday you thought maybe those responses were uninformative; is that right?

A. I don't remember the term I used.

Q. Well, would you say those responses are uninformative?

A. I don't know if I would call it uninformative; right? Theoretically, they should be answering 100 percent. Several of the respondents in the Horowitz survey, when asked about only PTV, answered less than 100 percent. I'm not quite sure what to make of that.

Q. Isn't it true that one of the advantages of conducting an interview for a constant sum survey is that interviewers can actually prompt respondents if the valuations are not adding up to 100 percent?

A. That is one of the advantages of using interviewers, yes.

Q. But the Horowitz interviewers for those Public Television-only systems did not instruct the respondents to make sure that their estimates added up to 100 percent; right?

A. If you're going to talk about the Horowitz questions, because there's five different versions, I'd like to at least -- can we look specifically at the question wording used by Mr. Horowitz in his survey for

PBS-only? I can't hold all five versions of his questionnaire in my head.

Q. Sure. Of course. That's fair. I don't know if you have Mr. Trautman's testimony in front of you, but he quotes a portion of it. Otherwise, we can try and find -- do you have a copy of that?

A. I have Mr. Trautman's testimony in front of me.

Q. Is it Direct or Rebuttal?

A. Direct and Rebuttal.

Q. Oh, I think in his Direct Testimony --

A. If we are talking about the Horowitz questionnaire --

Q. I know. He quotes from it, because --

A. I'd actually prefer to see the Horowitz questionnaire, if we are going to talk about the Horowitz questionnaire.

Q. I will find you a copy.

(Pause.)

BY MR. CHO:

Q. It appears that the binders do not contain that particular exhibit.

A. It just helps me to be able to actually look at a questionnaire when we are

talking about it.

MR. CHO: Permission to approach the witness.

(Mr. Cho proffers document to Witness.)

JUDGE BARNETT: Certainly. Do you have the exhibit number on that?

MR. CHO: It's 6012.

JUDGE BARNETT: Thank you.

BY MR. CHO:

Q. So my question was the other -- I'm sorry -- the Horowitz interviewers did not instruct the Public Television-only respondents to make sure that their estimate added up to 100 percent; is that right?

A. I'm trying to find the question.

MR. CHO: Mr. Hunziker, if you could pull up that line.

BY MR. CHO:

Q. I believe in your testimony in paragraph 52 you say, "PBS-only cable system executives were not instructed that the value of their estimate needed to add up to 100 percent."

A. I did say that. I just want to

confirm that I'm looking at the right question.

Q. And in your testimony you cite Appendix A, page 36.

A. Thank you. Right. I finally found it. Just to be sure. "So considering the value of the programs broadcast only on PBS station to your cable system, what percentage, if any, of the fixed-dollar amount would you allocate for this type of programming?"

Right. So they don't specifically ask them -- and I'm just looking through briefly, quickly, to make sure that they don't go back and make sure that it adds up to 100 percent. There isn't a general instruction at the beginning that says: Please write down your estimates and make sure they add to 100 percent. But they don't seem to reiterate that at the point of the PBS.

Q. In fact, they don't say that to the PBS-only respondents; isn't that right?

A. Oh, that's right. Thank you.

Q. Now, a constant sum question asks the respondent to divide the fixed sum of 100 across two or more categories; right?

A. Typically, yes.

Q. Typically, or is there --

A. Well, this is supposed to be a constant sum question here and we have an example of where they are not asking them to go across. But, yes, if you look in marketing research texts, constant sum questions ask a respondent to parse out points or dollars or something across multiple categories.

Q. And the other respondents to the Horowitz survey, besides the PTV-only respondents, the ones who did not carry Public Television, those were instructed to make sure that the valuations did add to 100 percent; right?

A. Correct.

Q. So not only is this question maybe confusing, as we talked about earlier, but isn't this question different from the constant sum question that was asked of all the other respondents?

A. Well, in the sense that the nature of the task is different between asking about a single category versus multiple, and then the reiteration to follow up and add to 100, yes.

Q. Now, I'd like to ask you next about

how the Bortz survey handled systems that carried only Public Television signals on a distant basis. We just talked about the Horowitz and we will switch gears to the Bortz.

Do you agree with Mr. Trautman that there needed to be some kind of adjustment to the Bortz survey shares because the Bortz survey discarded Public Television-only systems?

A. Yes, I do agree that, because they were excluded from being interviewed, they have no representation in the Bortz survey estimates. And so, yes, some adjustment is appropriate.

Q. Yesterday, I think you criticized Dr. Frankel's adjustments to the Bortz survey shares; right?

A. I did.

Q. But you didn't offer any criticisms, as I recall, of Ms. McLaughlin's approach; is that right?

A. I did not, no.

Q. And I believe yesterday you testified in response to -- I believe it was a question from Judge Feder -- that before you could

endorse Mr. McLaughlin's approach fully, you would have to spend some more time to make sure you understood her methodology; is that right?

A. I think what I said was I understand -- from reading her written Rebuttal testimony or Direct, I can't remember which, you can clearly see that Ms. McLaughlin takes into account a response rate by strata similar to what was realized in Bortz. The piece of information that I'm missing with respect to Ms. McLaughlin, as I sit here today, is I do not know if she sampled at 100 percent the PBS-only or if she sub-sampled within strata for the Public Television stations. And that is a missing piece of information that I could not -- I would actually have to go look at her Excel spreadsheets and have not done before coming to Court.

Q. To be clear, were you provided with Ms. McLaughlin's data and her testimony that fully details her method?

A. Yes, but if I remember correctly -- right -- when we started off my Direct: Why am I here; right? I'm a survey methodologist. So I came looking at the surveys and the survey

data. There is a lot of economics experts that I did not focus in on with respect to my testimony.

Q. But you did look at the adjustments that were performed by Dr. Frankel; right?

A. Well, Dr. Frankel, right, I had already commented on in my written Rebuttal testimony and so had been looking at his estimates already. And, therefore, you know, he did in his filing in February, I did look at his, because that was part of the -- Dr. Frankel was the person who did the estimations in the survey. So to me, Dr. Frankel's and Mr. Horowitz' testimonies are linked to the survey collected by Mr. Horowitz.

Q. As you sit here now, are you aware of any aspect of Ms. McLaughlin and Dr. Blackburn's adjustment of the Bortz survey shares that in your opinion is inappropriate or incorrect?

A. Once again, as I've already testified, I don't know how they populated it. But from -- other than that, the fact that they took into account the response rate that was realized in Bortz in their revised estimation

and their augmentation of the Bortz, it seems appropriate.

Q. Let's talk about another -- a different aspect of the Bortz survey. In your written testimony you talk about Dr. Shari Diamond's Reference Guide on Survey Research; is that right?

A. I do.

Q. In fact, you use it as the framework to review the methodology of the Bortz survey?

A. I do.

Q. In your opinion, is Dr. Diamond's Reference Guide on Survey Research a reliable authority on survey research?

A. There are those buzz words that lawyers like to ask me about. Is it a -- it offers, I think, a very sensible way to approach a survey and look at sampling, at the design of a questionnaire, and implementation, and puts forth the key questions that are useful to address in thinking about either designing a survey or evaluating a survey.

It is not, you know, a piece of empirical literature. It is not a textbook on survey research. But it offers a nice, quick,

handy guide to what are the key points. What was the population of interest, et cetera. And the way it frames it by asking it in questions, I think, is very useful.

Q. I'm not trying to be difficult, but are you saying it is not a reliable authority on survey research?

A. I don't mean to parse words with you, but what do you mean by reliable? Does it offer scientific evidence? No. It summarizes the literature. She is not a survey researcher, but is drawing upon the survey research literature in putting together that chapter.

So I have relied upon it -- in the lay term of "relied," not the statistical reliability -- I would say, yes, I rely on it.

Q. Okay. Thank you.

MR. CHO: Permission to approach the witness.

JUDGE BARNETT: Certainly.

MR. CHO: For the record, I'm handing the witness Exhibit 3011.

JUDGE BARNETT: Thank you.

THE WITNESS: Can I just interject

something? I wrenched my back sometime between yesterday and here. Can I just stand up for a couple of minutes?

JUDGE BARNETT: Absolutely.

THE WITNESS: Thank you.

JUDGE BARNETT: At any time for any length of time. And that goes for anybody else in the room. There have been times in the past when I have put a lectern on the bench so I could stand for a while. So absolutely.

THE WITNESS: Thank you. I will sit soon.

BY MR. CHO:

Q. Dr. Mathiowetz, one of the questions that the Reference Guide for Survey Research asks is: What is the evidence that nonresponse did not bias the results of the survey? Isn't that right?

A. Can you direct me to the specific page that you're looking at, Mr. Cho?

Q. Yes.

MR. CHO: Mr. Hunziker, if you could pull up Slide 11.

BY MR. CHO:

Q. I believe it is quoted in your

testimony at paragraph 19, but I will also point you to the reference now. I believe it is page 3983, JSC 3983.

A. You mean page 398?

Q. It's 383. Sorry, there are two sets of page numbers. One is the one provided by Counsel for Sports Claimants and then the other is on the document itself.

A. Thank you. Now, what was your question?

Q. My question is just the Reference Guide asks: What is the evidence that nonresponse did not bias the results of the survey? Is that right?

A. That's right.

Q. And did you address that question in your Direct Testimony?

A. I have to go back and look at it. I certainly, obviously raised it in my Direct Testimony.

MR. CHO: Mr. Hunziker, could you pull up -- thank you.

BY MR. CHO:

Q. So this is paragraph 22 from your Direct Testimony, Exhibit 1006. Would you say

that this paragraph addresses nonresponse bias?

A. Well, what I'm trying to do in this paragraph is to simply state that nonresponse bias is a function both of nonresponse rates, as well as the difference between respondents and nonrespondents.

And in part of what I'm looking at here is that the Bortz survey had, for the industry, a relatively high response rate. And more importantly, that response rate of approximate 50 to 55 percent across the years was achieved across the four strata. That is, they didn't have differential nonresponse.

Where you would worry about nonresponse bias would be, for instance, if we had -- I'll take an egregious example -- very high response rates to the low strata, like 100 percent, and very low response rates to the cable systems that were in the richest or the fourth strata.

Q. So one way you can see whether there is potential response bias is if there are differences between the sample of respondents in what -- I guess not the sample, the respondents and the nonrespondents?

A. Well, you don't have data on nonrespondents typically; right? And so you have to look to whatever metrics you have. Now, once again I think Mr. Trautman has done some analysis related to this to look at how the universe of the sample of the Bortz respondents matched to the full universe and sees a fairly high correspondence, which suggests a lack of nonresponse bias.

Q. We'll get there in a second. But focusing on your Direct Testimony, you wrote with respect to nonresponse bias that, "In addition, high response rates were achieved consistently across the strata, thereby reducing concerns relating to differential nonresponse." Is that right?

A. That's what it says here, yes.

Q. So does that mean in your opinion that nonresponse did not bias the Bortz survey results?

A. It gives us reenforcement that nonresponse bias -- that nonresponse was not differential and, therefore, you see equal representation across the four strata. That does not completely wipe out the potential for

nonresponse bias, no.

Q. Was there any other evidence you relied on when you were preparing your Direct Testimony to conclude that nonresponse bias may not have biased the results of the Bortz survey?

A. I don't think I offered any.

Q. I believe you said that the Bortz survey's response rate was between -- well, was in the 50s; is that right?

A. Across the four years, yes.

Q. Is it possible for there to be nonresponse bias even for surveys with higher response rates than that?

A. It almost sounds like you found my lecture notes on nonresponse bias. So you know you're looking at -- when you think about nonresponse bias you are thinking about a multiplicative function. That is, the nonresponse rate times the difference between the respondents and nonrespondents.

You worry about that most of all when you think that there is a potential motivation that causes respondents with certain characteristics to not participate. So bear

with me for my little example.

The Federal Government at one point wanted to do a survey related to exposure to risks for HIV. It wanted to have a very high response rate. This is back in the 1980s.

Did a large pilot study. That pilot study had about a 93 percent response rate, so exceptionally high. But it was clear that men most at risk of contracting HIV were least likely to participate. So that the Federal Government decided to cancel the survey that, even though it had an exceptionally high response rate, that the nature of the difference between the respondents and the nonrespondents was such that the population that was most of interest was not going to participate.

Okay. So now let's go back to the Bortz survey; right? Interviewer is calling: I need to talk to someone who is in charge of purchasing or is in charge of programming. Right? There is no reason, thinking from a behavioral perspective, that the respondents would be different than nonrespondents. That is, you know, when survey researchers look at

these data or look at any data collection and think about nonrespondents, they have to think about is there a theoretical reason why some people would participate and some people wouldn't?

Here there is no reason to think -- these are establishments; right? This is not the kind of issue where you are thinking, oh, I'm doing a survey about drunk driving. The people who are not going to respond to my survey when I tell them I'm doing a survey about drunk driving are the very people that not going to respond.

Here there is no a priori theory that would say certain respondents would consistently not report to the survey.

Q. But there are circumstances in which, even when there is no a priori theory as to why there would be differential response rates, that, in fact, there may be differences between respondents and nonrespondents.

A. Right. We're walking into the abyss of the great unknown.

MR. CHO: Mr. Hunziker, if you could put up Slide 16.

BY MR. CHO:

Q. In the Reference Guide for Survey Research, Dr. Diamond states that nonresponse often is not random. Do you agree with that statement?

A. I do agree with that. And I think that that is a much bigger issue when one is dealing with general population surveys than establishment surveys.

Q. Dr. Diamond also notes that there is a Federal Government guideline --

MR. CHO: Mr. Hunziker, if you could switch the slide.

BY MR. CHO:

Q. -- that states, "Plan for a nonresponse bias analysis if the expected unit response rate is below 80 percent." Do you see that?

A. I do see that.

Q. For the Bortz survey, have you reviewed not just what is in the written report, but also the underlying data?

A. I have.

Q. And did you examine that data to see if there are differences between the

respondents who completed the survey and the universe of cable systems?

A. I did some analysis with respect to that, but not a great detailed analysis.

Q. What specifically did you do?

A. I think I was mostly focused on looking to see if the response rates within strata varied and how they varied across years.

Q. You're familiar with the term "distant subscriber instances"?

A. Yes.

Q. What are distant subscriber instances?

A. DSEs, you mean? So this is --

Q. I'm sorry; not DSEs. Distant subscriber instances; Not distant signal equivalents. I know this proceeding has a lot of lingo.

A. There is a lot of lingo here. I don't -- I know what DSEs are in my head. I know I have come across DSI. But sitting here today, I don't think I want to define it.

BY MR. CHO: Mr. Hunziker, could you put up Slide 18.

BY MR. CHO:

Q. You talk about distant subscriber

instances in your testimony. Does that ring a bell?

A. When I had the benefit of all of my documents in front of me, yes.

Q. Is it fair to say that distant subscriber instance is one distant signal received by one cable subscriber?

A. I believe that is how I interpreted it in putting together my report, yes.

Q. Did you think to compare any categories of distant subscriber instances between the respondents to the Bortz survey and the universe of all cable systems to see if they're being over- or underrepresented?

A. I didn't consider doing that analysis, no.

Q. So unlike for the Bortz survey, you did look at whether there is bias in the Canadian Claimants Group survey, the Ford-Ringold survey, didn't you?

A. Well, I was quite motivated to do that, because they did not -- for the Ford-Ringold survey, they indicated that they selected -- when a cable system executive was being interviewed, they were interviewed about

a single distant signal; right? And they indicated -- they didn't tell us how they sampled that, but they did say that there was preference given -- I can't remember exactly the words they used -- preference given to French-speaking signals.

Well, that to me -- when someone doesn't describe to me the random process by which they have sub-selected, that to me is a little trigger to say: I need to go look at that. Because why was preference given to French-speaking signals in this case? What was the algorithm used to sub-sample these particular distant signals?

I didn't have that same level of motivation, because we didn't see that kind of sub-sampling within Bortz.

Q. So in your opinion, is comparing distant subscriber instances between respondents -- let me step back. For the Canadian survey, in fact, you decided to compare the distant subscriber instances of the French language stations among the survey respondents against the universe of Canadian signals; is that right? Looking at

paragraph 68?

A. Well, looked at. Let me just say I didn't do analysis. These were all tables that had been produced as part of the Canadian Claimants' reports. And so I was just comparing one set of tables to a different set of tables and saw how there was a mismatch in what they had reported.

Q. And one of the those tables was about distant subscriber instances?

A. Right. And so I'm citing here the Canadian Claimants' reports and one of them does talk about distant subscriber instances.

Q. So in your opinion is comparing distant subscriber instances between the respondents and the universe a reasonable way to assess whether there may be nonresponse bias in a cable operator survey?

A. Now that you've pointed it out, it might be a reasonable way. But I'd have to think a little further about it. I think what struck me once again with respect to the Canadian Claimants was just how different that DSI was compared to their sample with respect to French speaking.

I'd have to -- in order to make that, you know, and go back and do an analysis with respect to thinking about nonresponse, I'd have to really consider issues related to what populates the distant subscriber instances, where those data come from, et cetera, et cetera.

Q. So let's just make it hypothetical to be easier and you don't have to worry about diving into all of that data right now. Hypothetically, if there were a difference in Public Television's share of distant subscriber instances among the respondents who completed the Bortz survey, versus the universe of cable systems, would you think it would be possible that the Bortz survey results would be affected by nonresponse bias?

A. Where are you -- say that once again. Because you can't produce a DSI out of Bortz; right? You get a proportion related to a valuation.

So, I'm sorry, I'm not following -- I mean, the analysis that I did here is with respect to French-speaking systems.

Q. Let me step back and maybe clarify the

language. So a distant subscriber instance is an instance of one cable subscriber getting one distant signal. So, for example, if a cable system has 20 subscribers and they each get two distant signals, that is 40 distant subscriber instances.

A. Okay. I got that.

Q. And let's just say one of them is a Public Television station. Then you would say there were 20 Public Television distant subscriber instances for that cable system and 20, maybe, Commercial distant subscriber instances for that cable system. And we actually don't need to use a survey to get that. That is all filed here at the Library of Congress. So we actually have information about the distant subscriber instances even without surveying anybody.

So my hypothetical is if there is a difference between the Public Television share of distant subscriber instances among the respondents who completed the survey, the Bortz survey, versus the universe of cable systems, would it be possible that the Bortz survey would be affected by nonresponse bias?

A. Thank you for your clarification. I see -- you're looking at whether there is, at the cable system level, the nonresponse as opposed to the valuations. Yes, you could do that analysis and look at potential nonresponse bias.

Q. All right. So I'm going to dive a little bit more into your criticism of the Canadian Claimants Group Ford-Ringold survey -- unless you would like to take a break.

JUDGE BARNETT: Before we dive, let's take a 15-minute recess.

(A recess was taken at 10:31 a.m., after which the trial resumed at 10:50 a.m.)

JUDGE BARNETT: Mr. Cho, you may dive.

MR. CHO: Diving right in.

BY MR. CHO:

Q. On page 64 of your written Rebuttal testimony on the screen, you wrote that, "The overrepresentation of French-speaking channels, coupled with the unreliable estimates, rendered the data from the Ford-Ringold study to be of little to no utility with respect to the issue of relative market value of Canadian programming on Canadian distant signals." Is

that still your opinion?

A. That is.

Q. When you say unreliable estimates, are you talking about the confidence intervals on --

A. I am.

Q. Sorry -- on page 33 of your written Rebuttal testimony?

A. Yes, I am.

Q. And that is what is up on the slide here?

A. Yes.

Q. So those confidence --

A. Those charts.

Q. Sorry. So those confidence intervals, those are for the valuation of Sports programming on Canadian signals; right?

A. Yes, those are.

Q. And now I'm just going to round a bit to make the math simpler, but the widest of those intervals was roughly between from about 10 percent to about 30 percent; right? It's that right column.

JUDGE STRICKLER: You are rounding the year 2013?

MR. CHO: Yes, well, any of them. I guess one is 9 to 33, but I'm just rounding --

THE WITNESS: 2012 looks to be the widest, but I think in my Rebuttal -- can I just check my Rebuttal report, because I think there is a table for --

(Witness examining document.)

THE WITNESS: I just wanted to check something, thank you.

BY MR. CHO:

Q. No problem. So if I'm rounding to the nearest 10, just to to make my math a little easier, is it fair to say that the widest confidence interval in that right column is about 10 to about 30 percent?

A. From 9 to 33 percent.

Q. Yes.

A. Well, you know, we are arguing about small percentage points here in this hearing. So in 2012, that confidence interval goes from 8.8 to 33.3.

Q. Yes, thank you. So let's just assume hypothetically -- definitely only for the purposes of discussion -- all of the programming on Canadian stations is worth

somewhere around 5 percent of the total royalty pool.

MR. CHO: And Mr. Hunziker, can you show the next slide, so we can keep track of my math.

BY MR. CHO:

Q. If I am doing the math right, would that mean that the confidence intervals for the Sports programming on Canadian stations would amount to approximately half a percentage point and 1-1/2 percent points?

A. To calculate a confidence interval you have to know the sample size, as well as -- so what sample size are you assuming in order to make these computations.

Q. I'm sorry; I'm not trying to calculate a confidence interval. I'm just taking your confidence interval -- I understand I may be rounding too much, but let's say it's 9 to 33. But my point is, I guess, if the Canadian station programming were worth 5 percent of the total royalty pool -- which it is not -- but if it were, then the confidence interval for the Sports share between around 10 percent to 30 percent would mean that the Canadian

stations's Sports programing is between about a half of a percent and 1-1/2 percent; is that right?

A. I'm sorry; I'm not trying to be dense; I'm just trying to follow what you are doing here.

Q. Sorry. If all the Canadian programming is worth about 5 percent of the royalty pool, so the Sports programming is somewhere between 10 percent of that and 30 percent of that, so --

A. All the Canadian is 5 percent.

Q. Right -- would be half a percentage point and 30 percent of the Canadian programming would be 1-1/2 percentage points; is that right?

A. Right. All you are doing is taking 10 to 30 percent of 5 percent to multiply this.

Q. Exactly.

A. Got it. Okay. I'm with you now. Sorry.

Q. So another way to say that would be that the Canadian Sports programming would be worth 1 percentage point plus or minus half a percentage point. Is that fair to say? In

this hypothetical?

A. One -- let me just back up. So what you're really saying here in the slide is that Sports share of Canadian stations' programing is a point estimate of about 20 percent and it ranges from 10 to 30 percent; right?

Q. Right. Based on your Table 3.

A. Okay. That math looks reasonable.

Q. So is it your view that that is such a wide confidence interval that it makes the study of little to no utility in the context of this proceeding?

A. Certainly I hadn't looked at this kind of calculation, but when you think about it from a statistical viewpoint, right, I made my decision and my declaration in my written Rebuttal based on the confidence intervals that I produced in Table 3; right? Those are extremely -- I mean there is a very small sample size in the Canadian survey, in the Ford-Ringold survey. That renders very wide confidence intervals. They are what they are.

Q. I guess I'm just trying to understand, does that mean that in the context of this proceeding, that that level of the confidence

interval, which I think we established is about a percentage point, that that is so wide as to make the study of little to no utility in this proceeding?

A. Well, it's a percentage point when you take 10 percent of a 5 -- I mean in your hypothetical. But let's just look at Table 3; right?

In previous rulings, Judges have looked to the confidence intervals to be informative, because of issues with respect to thinking about point estimates; right? So first and most important, in the Ford-Ringold report they didn't report standard errors; they reported standard deviations. I thought it was useful for there to be a translation of those standard deviations into standard errors, so we are comparing apples to apples.

Now when I look at these confidence intervals and compare them to the confidence intervals one sees in the Bortz survey, you see much tighter confidence intervals, driven in part by the size of the sample and the nature of the sample design in Bortz.

Q. Now, just according to Mr. Trautman,

doesn't the Bortz survey have even wider confidence intervals than 1 percentage point?

A. Well, yes, we can look at those standard errors and they are wider than 1 percentage point.

Q. Okay. Let's come back to the first part of your sentence in paragraph 62.

BY MR. CHO: Mr. Hunziker? Thank you.

BY MR. CHO:

Q. When you say, "The overrepresentation of French-speaking channels," are you referring to your statement that French language stations accounted for only 21 percent of the distant subscriber instances, and which is less than, as you pointed out, the 36 to 55 percent of the French language systems in the Ford-Ringold sample?

A. Right. So in the Ford-Ringold survey, you have overrepresentation of the French-speaking stations.

Q. So again hypothetically, if the Canadian station programming is valued on the order of 5 percent of the total royalty pool, would it be fair to say that that overrepresentation that you identify would have

an effect of, at most, approximately 1 percentage point of the total royalty pool?

A. Well, where are you getting this 5 percent from? Is this from the Canadian or from Horowitz or from Bortz? Because they all have very different standard errors around them. So we should really talk about -- if we are going to talk about Canada and the Canadian channels, let's look at the Bortz and Horowitz estimates that are about .2 to 2.2 with standard errors around those point estimates. So none of those estimates come in at 5 percent of the royalty pool.

Q. I agree. I'm happy to use the figure that they are at 2 percent. But --

(Laughter.)

A. They are sitting very close to me, so I have to be careful.

(Laughter.)

Q. I guess my point is that even if the Canadians were as large as 5 percent, which sounds like you and I agree maybe they shouldn't be, then 20 percent of that, versus 40 percent of that, would be a 1 percentage point difference, roughly?

A. You know, I hate doing math on the stand.

Q. Sorry.

A. And so I would like to reserve my judgment about your computation, because you're taking a point estimate with a standard error and now you are multiplying it by something and, sitting here today at 11 a.m., I don't know if the translation of that standard error just is a direct linear function along your compensations.

JUDGE BARNETT: Public math is never advised, not even for statisticians.

THE WITNESS: Without my calculator and my flip chart.

BY MR. CHO:

Q. Absolutely fair. Just to be clear, though, I'm no longer asking about the standard errors or the point estimates of your Table 3. I'm just talking about this overrepresentation point where you say that the French language stations accounted for roughly 20 percent of the distant subscriber instances, but then that French language systems accounted for 30 to 55, or let's just say 40 percent of the sample.

So you know, that would be -- if the Canadians were as high as 5 percent in that world, then, you know, even if all of the French stations gave 100 percent to the Canadian group and all of the non-French language stations give zero percent to the Canadian, even that extreme example, the biggest difference you would get from this nonresponse bias -- I mean from this overrepresentation bias is a bias of 1 percentage point of the total royalty pool; is that right?

A. Well, it's compounded by the fact that for the Canadian survey they are only interviewing about one distant -- let's just walk through this; right? Let's just round this to 20 percent; right?

Q. Yes.

A. And so we see and we know from the survey about 40 percent of them are distant signals -- I mean 40 percent are French speaking. So that is about a 20 percentage point difference, but 100 percent difference. So you know it's -- this is why we have lies, damn lies, and statistics; right?

So you have almost 100 percent more present in the survey than you do in the population. How do I get that? You get 40 percent minus 20 percent is 20, divided by the 20 that is in the population. Okay.

So if you have an inflation of 100 percent represented in the sample and now in your extreme point -- right -- if all of the people who are in the sample are valuing the Canadians at 100 percent and all of them who weren't included, because they weren't French speaking, would have valued it as zero; right? So now I have to do -- so now that's 20 percent times 100 percent. You've got that figured out. So that's 20 percent.

Q. 20 percent of the entire Canadian share, which in this hypothetical would be 5 percent, but it probably should be some other number?

A. Yes.

Q. So I guess I just want to put that all together. Is it your opinion that a constant sum survey with a confidence interval of approximately 1 percentage point, or maybe less, and overrepresentation bias of

approximately 1 percentage point, or maybe a little less, is of little to no utility in the context of this proceeding?

A. Those aren't the levels that we're seeing. Let's just take the survey at its face value. We have almost 100 percent overrepresentation of French-speaking systems. That's the survey. Forget, you know, what the impact is. When you look at the Ford-Ringold survey with about a 30 to 55 percent -- I can't remember the numbers exactly -- of French-speaking systems, when their own data say that about 21 percent of the distant subscriber instances are French, right, that is a significant bias in that representation.

Then let's look at the standard errors that come from the Ford-Ringold survey in and of themselves. They are wide standard errors. So as you look at the point estimates from that survey, you have to consider those confidence intervals.

Now, you're extrapolating it up to kind of the broader world then and trying to apply that then to some other estimate. So I don't want to agree with your conclusion, even

though you're pointing this math out; right? If you are going to evaluate the Ford-Ringold survey, then you have to look at the standard errors that are produced from that survey.

Q. I guess I thought I was including those. But I guess my question really, you know, when the Judges are trying to look at the entire universe of data out here, if there is a wide confidence interval -- 10 to 30 percent I would say in the abstract is very wide for a confidence interval -- but it only pertains to a very small amount of the total royalty pool, does that still render that study of little to no utility in this proceeding?

A. I'm not going to speak for the Judges. I am coming at this as a survey methodologist. So the utility of this survey, when you have such small sample sizes, to me renders it unreliable. They obviously have to make their own decision about the data.

MR. CHO: No further questions.

JUDGE BARNETT: Mr. Olaniran, are you the next up?

CROSS-EXAMINATION

BY MR. OLANIRAN:

Q. Good morning, Dr. Mathiowetz. My name is Gregory Olaniran, and I am counsel for the Program Suppliers.

A. Good morning.

Q. You didn't have any role in the development of the Bortz surveys that are being used in this proceeding, did you?

A. No, I did not.

Q. And you were asked to review the Bortz surveys and render an opinion on the survey methodology; is that correct?

A. Yes, after the data had been collected.

Q. And the factual information about the 2010 through '13 Bortz surveys on which you relied for your opinion, where did that come from?

A. I'm sorry; could you repeat the question?

Q. All of the facts that you relied on for your opinion with regard to the Bortz surveys, where did that information come from? Just Mr. Trautman, or the Bortz --

A. The reports of the Bortz survey, as well as my own professional knowledge about the

field. But you are saying where did I get my information about the Bortz survey? Is that the question?

Q. Yes.

A. So there is a report that was part of Mr. Trautman's Direct written testimony and that served as the basis for my -- the foundation for my review.

Q. Now, and you reviewed all of the template questionnaires attached to Mr. Trautman's Direct Testimony; is that correct?

A. Yes, I did.

Q. Okay. Did you review all of the versions of -- all the different versions of the survey?

A. Do you mean the ones that were produced for 2010 to 2013?

Q. Actually, I was referring to the templates. There are several different versions of each survey.

A. There are two -- there are two major templates for every single year and I've reviewed those. There is one for WGN-only and then there is for other systems.

Q. Are you aware that, with respect to the two categories of templates, they had additional versions within each category?

A. Well, absolutely. There are -- I mean if we look at the question wording, it varies depending upon the nature of the distant signals.

Q. Okay. Did you also review the completed questionnaires in your preparation?

A. I have looked at some, but not every single completed questionnaire.

Q. Do you recall how many you looked at for each year?

A. Probably 50 to 100.

Q. For each year or --

A. Yes.

Q. -- for years.

A. Yes, each year.

Q. And did you perform any statistical tests regarding the validity or the reliability of the results?

A. So with respect to thinking about the validity -- right -- we have, looking at the Bortz instrument, an instrument that is a modified version of the constant sum question

that's been used and relied upon in proceedings in the past. From that perspective, it has already established itself with respect to construct validity.

So, no, I reviewed the questionnaire and looked at it from that perspective of construct validity, does it measure what it purports to measure? So --

Q. So -- I'm sorry. Please finish.

A. So with respect to reliability, there are no data from the Bortz survey that I could use to measure reliability and, therefore, didn't undertake that.

Q. If I understand your response with regard to validity, you actually did not conduct any tests with regard to validity. You relied on previous findings with regards to the Bortz surveys; is that correct?

A. That's correct.

Q. And then with regards to --

A. Can I finish --

Q. Please.

A. -- my response? So, when you think about validity, and as a statistician thinking about validity or as a psychologist thinking

about validity, there are different ways to measure validity. And one is to think about, well, what is the true value out there? Well, we don't know what the true value is. That is why we are doing this survey.

So to think that there is an analysis that one can just go out and conduct with respect to validity is, you know, that doesn't exist.

So you have to think about the other ways to think about assessing validity. One that is used a lot in social sciences is construct validity. How do you measure construct validity? Well, you can look to see whether experts believe that it measures what it purports to measure.

Well, clearly, this constant sum question has been used before. And in some sense it actually also has predictive validity in the fact that in 2004 to 2005, it was the foundation by which the Judges made their rendering about allocations.

So with respect to validity, I didn't feel -- we're not looking at a new questionnaire. I did not feel we needed to --

that I needed to go out and measure or attempt new empirical data with respect to validity. And even if I was interested in doing so, which I'm always interested, it is almost impossible to assess that at this point.

JUDGE STRICKLER: Excuse me. Did I hear you correctly that you said that the Bortz survey has predictive validity because the Judges in '04 and '05 adopted it?

THE WITNESS: Yes. So, you know, one thing you look to see is whether an instrument has been used for the purpose for which it was collected. And we see, you know -- and that is a form of either construct or predictive validity.

JUDGE STRICKLER: Thank you.

BY MR. OLANIRAN:

Q. And with respect to reliability, you said that you did not perform any statistical tests; is that correct?

A. No, I did not.

Q. Thank you.

JUDGE FEDER: Excuse me. How are you defining reliability in this context?

THE WITNESS: So that's a great

question, because we all have different uses of that term. And unfortunately in statistics there are two uses of the term reliability. So let's make sure we are perfectly clear.

The one Mr. Cho and I just talked about with respect to reliability has to do with confidence intervals. And so that's talked about as reliability.

But I'm going to presume that I understand that what you're talking about with respect to reliability is often referred to such as test/retest reliability. That is, does administration of this instrument to the same person within the same time frame, when nothing else has changed, get you the same answer? That's a measure of test/retest reliability that is often considered in thinking about questionnaires.

Because -- the analogy I like to use is one with my sense of blood pressure. If you have a blood pressure device -- right -- you want it, if I put it on my arm or your arm or anyone else's arm, you want it to be a consistent measuring device. And if you put it on my arm now and you do it two minutes

later -- and hopefully my blood pressure hasn't gone up -- and if it renders the same blood pressure, you see it as a reliable instrument.

You would like the same thing with respect to a survey. And when you say the test of reliability, that was my assumption. But I'm glad you asked the question that clarified that. That's very different than the confidence intervals and reliability that we just had been talking about.

BY MR. OLANIRAN:

Q. And stated with respect to the latter, stated differently, just means that the study yields consistent results under the same conditions. Is that a fair way to put it?

A. Under the exact same conditions in the same time frame administered to the same respondent.

Q. So you didn't do any reliability testing, did you?

A. I was hired in 2016. These data were collected in 2010 to 2013. There is no way post hoc to do the kind of measure of reliability that we just discussed.

Q. Okay. And following your review, you

concluded that the 2010 through '13 Bortz survey provide a valid and reliable assessment of the marketplace value of different categories of distant signal programming that cable systems carried during the 2010 through '13 years; is that correct?

A. You're obviously quoting from a particular paragraph. You want to point me to that paragraph, just so I see it?

Q. Yes, paragraph 2 -- I'm sorry, page 2, paragraph 4 of your Direct Testimony.

A. Yes, I do see that.

Q. Okay. Is it fair to describe the term "valid" as meaning a survey measures what it purports to measure?

A. Well, certainly validity is measured and discussed in statistics a lot of different ways. And construct validity does, while it may appear to be circuitous to us sitting here in Court, it is how construct validity is designed.

Q. And the thing being measured in this proceeding is the marketplace value of different categories of distant signals programming?

A. Well, the question before the Court is, right, how to distribute the royalties. And one approach that has been taken and has been relied upon in the past is to look at the relative valuations by cable system executives.

Q. So was that a yes to my question?

A. I think it is a yes.

Q. Thank you. And the different program categories to which you refer in your testimony are the program categories that are identified in the Bortz surveys; is that correct?

A. That's correct.

Q. And the only survey literature you cite in your Direct Testimony is Dr. Diamond's Reference Manual, which I think you've testified to, this Exhibit 3011. And the scope of the reference guide is somewhat limited, I think, as you testified; is that correct?

A. What do you mean by "it's limited"?

Q. In other words, the manual is not exhaustive of all of the issues that are related to survey research, but it is a guide; is that right?

A. It is a reasonable guide to the major issues.

Q. Thank you. And you're familiar with the testimony of Dr. Steckel on behalf of the Program Suppliers; is that right?

A. I am.

Q. And for his Direct Testimony, he relied on the Federal Judicial Center's Manual for Complex Litigation. Do you recall that?

A. I do recall him citing to that, yes.

Q. And that's a reputable publication too, is it not?

A. It is a similar guide to the one that I've used, yes.

Q. And in his Direct Testimony, Dr. Steckel referred to several factors, criteria -- I think the MCL criteria -- that he believed that a survey must conform to. Do you recall that?

A. I do recall him citing to that guide. I don't remember exactly his testimony on those points.

Q. Okay. I'll represent to you these are direct quotes from Dr. Steckel's testimony. I'm just to read those several factors that he identified to you.

First is: The population was clearly

chosen and defined. The sample chosen was representative of that population. The data gathered were accurately reported. The data were analyzed in accordance with accepted statistical principles. The questions asked were clear and not leading. The survey was not conducted by -- was conducted by qualified persons following proper interview procedures. And the process was conducted so as to ensure objectivity.

Do you agree with those factors?

A. Those seem like reasonable factors that one should strive for in data collection, yes.

Q. Now, are you familiar with the phrases "recall bias" or "respondent bias"?

A. Yes.

Q. Okay. And it's a systemic error that is caused by a respondent's failure to completely or accurately recall information being sought by the interviewer; is that correct?

A. Would you just repeat? I just want to make sure I agree with you before I say I agree.

Q. Fair enough. It is a systemic error that is caused by a respondent's failure to completely or accurately recall information being sought by the interviewer.

A. Right. So there are two pieces to this. So one is, you know, responding or recall, and the second part is bias. So bias, as opposed to error when we talk about it, bias is always systemic and pushes respondents towards one direction or another, as opposed to respondent error, which can be inaccurate answers in either direction.

So I just want to make sure we're clear on those two, because respondent bias would suggest, you know, a particular direction of the error.

Q. Could you have both a recall bias and respondent error as part of the response?

A. Typically, when we are looking at measurement error, we look at either error or bias. Because bias would suggest that the question or that the respondents all move in a particular direction in answering the question, whereas error is just an inaccuracy where some people may overestimate, some people may

underestimate.

Q. My question is whether or not you could actually have both present in a survey response.

A. Not with respect to a single question. So a single question is either going to be accurate, potentially fraught with error, or be biased, but not biased and error.

Q. With respondent error, is it of particular concern in retrospect -- strike that.

Is it only of concern with regard to retrospective studies?

A. I just want to clarify some terms. You keep talking about respondent error. And I think the term that I use, because I do research in this area, tends to be response error.

Q. Response error.

A. So it's not that the respondent is erroneous; it's that their response may be erroneous. And you can have response error in both factual and opinion questions.

Q. Let me try to get a clarification on that. What error do you associate with failure

of a respondent to completely or accurately recall information being sought by the interviewer?

A. I would call that response error.

Q. Fair enough. Let's go with that. And back to my question whether or not this particular error is associated principally with retrospective study.

A. No, it is not just related to retrospective recall.

Q. Okay. It's a survey axiom, is it not, that the further back you ask the respondent to recall the information, the less reliable that information provided by the respondent becomes?

A. I think you have been reading my own writing. So I think we want to be perfectly clear on this. When you are asking people about episodic information -- so I'm coming to you and asking you about how many times you went to the dentist; right? Asking you about that for last year is going to have some measurement error associated. If I ask you about how many times you went to the dentist five years ago, you have to search your memory and try to come up with that answer.

And when we plot response error related to the recall of episodic information, that is information stored in respondent's memories as discrete episodes, we know that the recall of that information is poorer the further back you ask someone to report.

Q. Thank you.

A. Let me -- we do not have that same body of empirical literature with respect to going back to asking about issues that are, for instance, when a respondent is reporting for an establishment survey, for which we are not asking them for episodic recall. They're not -- in fact, if we look at the constant sum question, we are not asking them about particular occurrences in their life. We are asking them about a particular year and reporting about how they would have allocated it that year.

Q. So my question is whether or not, with regard to what you call an establishment survey -- would you regard the Bortz survey as an establishment survey?

A. In both the Bortz and the Horowitz, the respondent is reporting on behalf of the

establishment, as opposed to their own personal, you know, life or demographics or opinions.

Q. That's a yes?

A. I'm getting there. Yes.

Q. Okay. Thank you.

JUDGE STRICKLER: It was a quick trip.

THE WITNESS: Sorry.

(Laughter.)

BY MR. OLANIRAN:

Q. And so with regard to establishment surveys, your testimony is that there is no empirical data as to whether or not the further you go back in time the less reliable the respondent's response is?

A. I'm saying that I'm not aware of the same empirical data that we have with respect to asking people episodic information in demographic surveys.

Q. What is your opinion?

A. Well, clearly, you know, contemporaneous measurement is going to be less fraught with error than when you are asking about things in the distant past, whether that is demographic or establishment. How that

memory decay function happens for people responding on behalf of establishments or companies or cable systems is not as clear-cut to me as it is for asking people about their own personal memories.

Q. Now, each Bortz survey occurs sometime after the end of the particular royalty year that the survey is designed to study; correct?

A. That's correct.

Q. And each survey seeks to have respondent recall certain information about the programming during that royalty year; correct?

A. Correct.

Q. So in the context of the Bortz surveys, you would expect that the further back you ask a survey respondent to recall information about programming, the less reliable their responses would become; correct?

A. Well, now you've brought in the word "reliable" again. If the same empirical literature that we know about demographic surveys applied to establishment, yes, the further back you go you would expect there would be less accurate information.

However, there are all kinds of things

that you can do to improve that, like encourage the respondent to think about the particular reference period of interest. And once again, as I have already said, thinking about going further back with respect to recall of information related to establishments is different than thinking about your own episodic memories.

Q. And you certainly, in your testimony, relied on either testimonies from past proceedings as well as some of the Judges -- some of the past decisionmakers' determinations; correct?

A. Yes, I reviewed prior testimony as well as prior rulings in my consideration.

Q. Okay. So you must be aware, then, that the Bortz report was criticized in past proceedings for recall bias issues?

A. I do remember seeing that, yes.

Q. And according to Mr. Trautman's testimony, actually, the Bortz survey covering the 1983 royalty year was conducted in 1985. I'm not quoting, but paraphrasing his testimony. And he also said that Copyright Royalty criticized the Bortz survey because

they were concerned about the ability -- because the Tribunal was concerned about the ability of the respondents to recall, in 1985, information about programming actually carried in 1983. Do you recall reading that in Mr. Trautman's testimony?

A. I don't remember that particular piece of information, no.

Q. I think it should be up on the screen. It's page -- Appendix A, page 11 of Mr. Trautman's testimony -- written testimony do you see that?

A. Okay. Now that you have reminded me, yes, I have read this in Mr. Trautman's report.

Q. Would you have agreed with the Tribunal's criticism in that case?

A. You know, I don't have those questionnaires in front of me, so I don't know how they phrased the questions. But I will take it at face value that their criticism was a valid concern.

Q. In preparing your Direct Testimony, did you ask the Bortz Company, or Mr. Trautman, when each of the 2010 through 2013 surveys was commenced and completed?

A. You can actually see that in the Bortz report. There is a table that shows the beginning and ending dates of each of the years of data collection.

Q. So you are aware then that the 2010 survey did not commence until December of 2011; correct?

A. I am aware of that, in part, because the Bortz & Associates was waiting to find -- was awaiting the results of a pilot study, as well as waiting for the results from -- or the ruling from the Judges in the 2004 to 2005 distribution case in order to see if they needed to modify the questionnaire further.

Q. I understand. I'm not asking why it was late. I am just asking whether or not you are aware of that.

A. I thought I would just offer that there were reasons why they delayed the data collection for that particular year.

Q. So you are also aware that the majority of the 2010 survey was conducted in 2012; right?

A. Let me just grab Mr. Trautman's report to verify that.

Q. I don't think you will find that in Mr. Trautman's report, by the way. But if you are not aware, that is fine.

A. No, I think it is -- I think the dates of the data collection are somewhere in the Bortz report.

JUDGE STRICKLER: We are having a recall dispute. Let's see who's right.

(Laughter.)

THE WITNESS: Because I know I've seen a table with this. So it's somewhere in here.

MR. LAANE: I believe it is Table 2-3, if that helps.

THE WITNESS: Thank you. Yes, it is. It is the bottom of page 21 of the Bortz report.

JUDGE STRICKLER: Well, that doesn't actually tell you when the majority of the studies were done. That just tells you that was the period in which the studies were done; right?

THE WITNESS: Right. I thought the question was referring to when did the field period start and end. But, no, you don't know when the actual -- looking at this table, you

don't have the dates of the actual data collection for the majority of the studies.

BY MR. OLANIRAN:

Q. My question was whether or not you were aware that the majority of the 2010 survey was completed in 2012.

A. Right. And, no, before you mentioned that, no, I wasn't aware. Other than looking at this and seeing that because the start date is 12-7-2011 and goes until April of 2012. My assumption was that the majority of it had been in 2012. But I haven't looked at the actual data to see if that is true.

Q. Okay. And so the timeline from the end of 2010 to the completion of the survey in 2012 is about 16 months, roughly; right?

A. It is.

Q. Okay. And so it's reasonable to conclude that assuming that the majority of the survey -- since you don't know, let's assume that the majority of the 2010 surveys were, in fact, completed in 2012. It's reasonable to say that those interviews that occurred in 2012 for the 2010 survey create significant recall bias issues; right?

A. Certainly -- and this is not an ideal time to steal the questionnaire for 2010, but you also have to look at the questionnaire where you see changes that have been made to the Bortz questionnaire over the years and where they clearly reference to the respondent the calendar year they're to be thinking about in answering the question.

Q. So we shouldn't take the timeline into account when we evaluate whether or not a particular survey creates recall issues?

A. I didn't say that. That's not my testimony. I'm saying that there have been changes made to the Bortz questionnaire that, because of the fact that they don't go into the field until there is a time lag, that they remind the respondent in the phrasing of the question the calendar year that is of interest.

Q. Do those changes alleviate the recall issue?

A. They certainly remind the respondent that the question wording is referring to the past and not present. And I think on this point if we wanted to look specifically at the Bortz versus the Horowitz questionnaire, there

is a key difference --

Q. I'm not asking about the Horowitz questionnaire, by the way. Let's -- let's stay with the Bortz questionnaire, if you don't mind.

MR. LAANE: Your Honor, if the witness could be allowed to complete her answer.

JUDGE BARNETT: I think she answered the question about the Bortz survey.

Go ahead, Mr. Olaniran.

MR. OLANIRAN: Thank you, your Honor.

BY MR. OLANIRAN:

Q. Notwithstanding the improvements to the Bortz survey, you would agree though that a 16-month time lag between 2010 and the 2012 when the surveys were completed does create a recall issue, doesn't it?

A. Definitely, the respondent has to work harder to get back to that information. And I think it's also important to just note that in the 2011, 2012 and 2013, you don't see as long of a delay in the field period.

Q. Are you aware that a portion of the 2011 surveys were also completed in 2012 -- I'm sorry, in 2013?

A. Yes, there is a portion completed in 2013.

Q. There's also a longer timeline for completion -- maybe not as long as the 2010 -- is there not?

A. No, but you can also see that they start in August of 2012.

Q. I understand that they started about the time that they normally would start, but they still have an extended timeline with regard to completion?

A. Yes, they did.

Q. And that also could create recall issues?

A. It could.

Q. Did it?

A. One cannot know for certain, looking at these data.

Q. Can you test for it?

A. There is no way, looking at the Bortz data post hoc, to test for that, no.

Q. So you didn't test for it?

A. Given that there is no test, no.

Q. Now, have you mentioned this lag time at all for 2010 and some of the 2011 surveys in

your testimony?

A. I did not, no.

Q. In paragraph -- on page 5, paragraph 11 of your testimony -- just making sure, bear with me. You state -- are you there?

A. Excuse me; what paragraph was it?

Q. Paragraph 11, page 5, the bottom of page 5. And you state in that paragraph that, "The Bortz survey was designed to address the relevant question of interest." Do you see that?

A. I do.

Q. What is the relevant question?

A. Here, I'm not an economist. I look to how the Judges have in the past discussed the relative valuation. And to me, the relevant question of interest is how should the royalties collected from distant signals be distributed to the various Claimants; right? Those various Claimants are represented in the survey via the different program categories.

Q. And with regard to that question, do you agree that the Bortz survey purports to discount the relative marketplace value of

different categories of programming as they are organized within this proceeding?

A. I believe they do, yes.

Q. And so you think the Bortz survey has answered that question?

A. I do for not just the question that they used, but who they chose as the respondents.

So, you know, one of the issues that clearly there are various opinions on is who is the -- what is the population of interest? Who is the buyer here? And, you know, in the Bortz survey we see a survey of cable system executives; right? And in previous rulings, clearly the Judges have also seen that the buyer, that the population of interest are the cable system executives.

Q. And you've used the phrase "relative marketplace value." And so my question for you is what do you understand by the term marketplace?

A. Well, it is a hypothetical market; right? So what we're trying -- you know, every one of these cable system executives has paid for being able to transmit these distant

signals. Their royalty payments have to be disbursed back to the original holders of the Copyrights. And so there is no true marketplace; right? They are purchasing signals, not categories. They have to -- but the royalties belong back to the original Copyright Owners.

Q. So in -- the Bortz survey is asking respondents who are cable system executives to allocate a fixed-dollar amount across the programming categories in these proceedings; is that correct?

A. Yes, I think that's a fair summarization of that question.

Q. And in this hypothetical marketplace, do you know who the buyer is?

A. Well, as I've stated before, right, the buyer here is the cable system executive.

JUDGE STRICKLER: Just to be clear, the question asks for an allocation of points, not money; right?

THE WITNESS: Let's look specifically at the wording.

JUDGE STRICKLER: This is Question 4; correct?

THE WITNESS: Right. It is: Assume your system spent a fixed-dollar amount by 2010 to acquire all the non-network programming. What percentage, if any, of the fixed-dollar amount..." So it focuses in on a percentage of a dollar amount, not points.

JUDGE STRICKLER: Thank you.

BY MR. OLANIRAN:

Q. And who would be the buyer in this market?

A. The person who purchases the distant signals to be transmitted.

Q. And who is the seller?

A. This is technical from -- I'm not -- my expertise isn't in the cable market. I actually don't think I completely know who the sellers are. Probably the producers of those distant signals, since they are purchasing these distant signals.

Q. And when you say the producers, do you mean the owners of the programming?

A. The owners of the signal. But once again, this is not my area of expertise. I have already admitted to that.

Q. I understand that. Because you've

agreed that the Bortz results represent relative marketplace value of the different categories of programming, and I'm trying to get an understanding what you perceive to be the marketplace that is being referenced in that standard.

A. Well, the marketplace purchasers are the people who purchase the distant signals.

Q. I understand that.

A. Can I, please --

Q. Sure.

A. As a survey methodologist, that's the key question to me; not who the sellers are. Because if the purchasers are the cable system executives, that's my population of interest that I have to sample.

So not to be kind of, you know, trite, I don't really care as a survey methodologist who the sellers are. Because to me, I need to know who that population of interest is for the survey. And that means I have focus in on who is the buyer.

Q. So as a survey researcher, you are looking at the behavior of the buyer in the marketplace, not the behavior of the seller?

A. I am looking at to be able to answer this from the perspective of the buyer, yes.

Q. As far as you understand, the survey results are just from the perspective of the buyer in the marketplace?

A. Well, now you've posed a different question. Maybe some of these are also producers. I don't know whether there are also producers in the survey. I'm looking at them from their behavior of being the purchaser.

Q. I'm just trying to get some clarity. And I -- I take your point well. I'm just making sure that I understand what you are saying. That when you are looking at the Bortz survey results, and you agree that the Bortz survey results represent the relative marketplace value of different categories of programming -- and I don't want to misstate your testimony, so correct me if I am wrong -- what you're saying is that the relative marketplace value of different programming as presented by Bortz represents the perspective of the buyer?

A. That's my interpretation.

Q. Okay. Thank you. And do you believe

that to be the interpretation of the respondents when they're answering these questions?

A. I think they're responding as the people who purchase distant signals.

Q. I understand that. But my question is whether or not you believe your interpretation to be the same as the respondents' when they are answering these questions posed by the Bortz interviewer?

A. I couldn't answer what frame of mind the respondents are in when answering the question.

Q. From the survey researcher stand point, is it your opinion that the Bortz interviewers intended for the respondents to have the buyer's perspective in mind when they are answering the question?

A. I think they are -- you know, if you look at the questions, they are asking someone who is responsible for programming decisions. And that's the person -- they're answering questions from the perspective of the importance of programming. That's the frame that they are asked to think about. I'd have

to look once again to the introduction to the Bortz questions.

But, you know, if we look at, "Can I ask to speak to the person most responsible for carriage decisions for the system?" So that's the frame that the respondent in the survey is introduced; right? And they're being asked to talk about regarding certain programming. So, you know, they are not told you are the purchaser of distant signals. They are being told that the survey is about programming carriage decisions.

Q. Just asking them about what they would pay or how expensive and things of that nature; right?

A. We can look at the specific questionnaire, but they asked them how important various program categories are; what those program categories would cost in a free and open market; and then how they would value those. Yes.

Q. Okay.

A. So I just want to be clear; right? My idea about the buyer, that is an issue with respect to sampling frame. The respondent is

never told that they are the buyer. That isn't what is introduced to the respondent. They're told that this is a survey about carrying certain programs.

And so the questions that they are being asked is about the carriage and importance of certain programming across these distant signals.

Q. I'm not sure --

A. We have been back and forth on language, and I just want to be perfectly clear; right? When you are designing a survey, you have to make a decision about what is your universe? Who are you going to sample? And the decision by Bortz to sample cable system executives comes, as I understand it as a non-economist, since they are the deciders with respect to which distant signals to purchase.

But when they're brought into the survey and the questions, right, the questioners don't say to them -- don't say to the respondent: We are calling you because you are the purchaser of distant signals; we are calling you because you are the person in charge and we're going to talk about, you know,

cable systems regarding certain programming they carry. And are you the person responsible for programming carriage decisions?

So they are already introducing this issue of program categories to them, as opposed to distant signals.

Q. But are you saying that the Bortz survey did not intend to associate making programming decisions with acquisition of programming?

A. No, I'm not saying that. They clearly review with the respondent the distant signals, up to eight of them, that are of consideration in answering these questions.

Q. So in your view when you look at the survey, would you expect that the person, responsible for acquisition of programming, is also -- strike that.

From a survey researcher's perspective, when you are looking at the screening questions, this Question Number 1, are you interpreting that -- are you -- do you understand that the person most responsible for programming carriage decisions also has knowledge about purchasing decisions made by

the system?

A. Yes, I would think they do.

Q. Okay. So there is a link between the program carriage decisions and purchasing decisions; right?

A. Yes, I just wanted to be clear, because when I said the buyer, I wanted to make sure that we linked back to the actual wording that was used in the questionnaire.

MR. OLANIRAN: Your Honor, I'm not sure whether or not you wanted a clean break.

JUDGE BARNETT: Changing topics, Mr. Olaniran?

MR. OLANIRAN: Yes.

JUDGE BARNETT: This is as good a time as any. We will take our noon recess and we will reconvene at 12:55.

(A lunch recess was taken at 11:55 a.m., after which the trial resumed at 1:04 p.m.)

AFTERNOON SESSION

(1:04 p.m.)

JUDGE BARNETT: Please be seated.

Mr. Olaniran, not to cramp your style, but I'm curious if you have a time estimate for this witness.

MR. OLANIRAN: I actually mentioned to counsel for JSC, I'm looking at maybe an hour to an hour and a half, depending on how the conversation goes sometimes.

JUDGE BARNETT: And who else is going to be examining this witness?

MR. COSENTINO: I will be, Your Honor.

JUDGE BARNETT: Mr. Cosentino. Okay. And then redirect?

MR. LAANE: Yes, Your Honor. It's going to depend on what else we hear. Right now I don't anticipate much.

JUDGE BARNETT: Okay, all right. Like I said, this is in your hands. We're on day four and witness two.

(Laughter.)

JUDGE FEDER: Just 23 to go.

THE WITNESS: I'm sorry.

JUDGE BARNETT: No, no, that's --

we're -- I'm really actually fascinated by your testimony, but that's my thing, you know.

Mr. Olaniran?

MR. OLANIRAN: Thank you, Your Honor.

CROSS-EXAMINATION -- Resumed

BY MR. OLANIRAN:

Q. Dr. Mathiowetz, I -- I want to take you back to a discussion you had yesterday, I think, with Mr. Laane with regard to the number of categories you can -- you can focus on in a survey.

Do you recall that conversation?

A. Well, there were several conversations around that.

Q. And I think, you know, this was regarding guidelines regarding how many different categories you can have in a constant sum survey or something to that effect.

A. Yes, I remember that.

Q. Yeah, and I -- and I think your testimony was that there are no fixed guidelines regarding how many different categories. I think that you testified that the literature mentioned ten, after ten or more, you have to start paying attention,

something like that? Is that --

A. You know, clearly, including the articles that Dr. Steckel referenced, there's discussion that once you get to ten or more categories, you should consider different methods.

Q. Okay. And how are you defining categories?

A. So here I would consider a program category is -- is a category. So the constant sum questions that respondents were faced in the Bortz survey, they are making an assessment across five, six, or seven categories.

Q. Okay. And so you are considering categories with regard only to the constant -- constant sum question?

A. Well, that was the nature of the conversation --

Q. I see.

A. -- I was having with Mr. Laane.

Q. Okay, thank you. And do you have a binder of the Program Suppliers' cross-examination exhibits by any chance?

A. No, I do not.

Q. Okay.

MR. OLANIRAN: May I approach, Your Honor?

JUDGE BARNETT: You may.

BY MR. OLANIRAN:

Q. Can you take a look at Exhibit 6020. Oh, I think that exhibit is restricted, but...

JUDGE BARNETT: And would you like to close the --

MR. OLANIRAN: I don't think we have anyone in the room that is not supposed to be here.

JUDGE BARNETT: I don't either, but in case there's anyone in the room who is not -- has not signed a nondisclosure agreement or is not privy to confidential information --

MR. OLANIRAN: I can just identify the document at the top, and most of the following references actually do not identify that system in particular.

JUDGE BARNETT: Okay, thank you.

BY MR. OLANIRAN:

Q. Dr. Mathiowetz, this is the Charter Cable questionnaire for 2010. Do you see that?

A. I do see that.

Q. Okay. And this is the -- one of the

non-WGN-only questionnaire, right?

A. Correct.

Q. And do you see the date of completion on that, on the document?

A. It's hard to read. It looks like it might be 3/6/12.

Q. Okay. That's the same that I read.

And I want to ask some questions about -- about the questionnaire, but let's review just briefly the different parts of the questionnaire. Okay?

JUDGE BARNETT: Before we proceed, Mr. Olaniran, this has already been admitted?

MR. OLANIRAN: Yes, it is.

JUDGE BARNETT: Thank you.

MR. OLANIRAN: Sorry.

BY MR. OLANIRAN:

Q. And so Question 1 is the screening section, right?

A. Correct.

Q. Please go to Question 2b. That is the question that identifies all of the signals carried by -- by this cable system, correct?

A. Well, it identifies the distant signals that are the focus. So let me just

count how many there are. So there are eight listed here. And if we remember in Bortz -- put a limit, so it might not necessarily be all of the distant signals, but it's all of them that are the focus for this interview.

Q. Okay. And Question 2b is the -- is the ranking question regarding the importance of the program categories carried by the system. Do you see that?

A. Right. This is one of the warm-up questions.

Q. Right. And Question 3, another warm-up question, relating to how -- another ranking question related to how expensive each program category is, right?

A. Yes.

Q. And then Question 4a is the payoff question. That's the constant sum question. Right?

A. Correct.

Q. Okay. Do you recall average length of the -- of each interview?

A. I don't remember that being reported exactly.

Q. You don't recall at all?

A. You know, something in the 10 to 15, 20 minutes, something like that, but I don't -- I don't remember that particular number.

Q. Okay. It's fine. Now, for each of the -- the questions, for Questions 2, 3, and 4 -- I'm sorry, Questions 2b, 3, and 4, would you agree that in order to perform the tasks required by the interviewer, the respondent had to do the following -- and tell me if you agree or disagree. First, they had to listen to the list of signals read by the interviewer as carried by the system, correct?

A. Well, that they do to 2a. They listen to that in response -- as part of Question 2a. They don't reread the signals in Question 2b.

Q. My question was for the tasks that are required to be done in 2b, 3, and 4, would you agree or disagree that the respondents would have to do the following: Recall -- maybe not listen -- recall the list of distant signals read by the interviewer as being carried by the system. Correct?

A. They -- they have to have that frame of reference, yes.

Q. Just tell me if you agree or disagree.

A. Well, they've just been read that list so I don't think of it as a recall. They've been primed with that at 2a and now they're being asked Question 2b. So, to me, that isn't a recall. They have the frame of reference given them in Question 2a.

Q. Okay, fine. And the second -- another task, they have to again listen to a list of program categories identified by the interviewer, correct?

A. Yes.

Q. Okay. And for the alternate ranking exercise, what they have to do is recall all of the content on the signals that were just read to -- the respondent has to recall the content on the signals that were just read to him or her, correct?

A. Well, to answer Questions 2b, 3, and 4, their frame of reference should be all of the content on these distant signals, yes.

Q. Right. And then they have to recall the content of each of the distant signals, correct?

A. Well, they are being -- they don't have to parse it out. They're answering them

with respect to the totality of those distant signals.

Q. You don't think they have to know the -- the content of each signal?

A. No, they do, but they're not being asked to -- to do an evaluation for each of the signals. They're being asked to do an evaluation across those eight signals.

Q. Well, I understand your statement. My question is whether or not they have to recall the content -- they have to identify the content through recall of which is signal carried, correct?

A. They have to be familiar, yes --

Q. Okay.

A. -- with the content of each of these signals.

Q. Okay. And then in that process also, they have to carve out from that content what content is considered network programming on ABC, CBS, and NBC, correct?

A. Correct.

Q. And then -- but they also have to remember to keep Fox broadcast station content in and not out of that -- out of that content

that they're supposed to be considering; is that correct?

A. If that's part of the mix of their signals, yes.

Q. Okay. And then they then have to reorganize and aggregate that remaining content that they are being asked to evaluate by the program categories that the interviewer read to them, right?

A. Yes.

Q. And in this case of Exhibit -- well, in the case of Question 2b, this is the first -- the first time that the respondent will be hearing a list of programs would be in Question 2b, correct?

A. Correct.

Q. Okay. And then once they reaggregate and reorganize the program in the -- within the program categories that the interviewer has asked them to do, they then perform in Questions 2b and 4 and 3 the ranking exercise, right?

A. Right.

Q. And then for Question 4, they do the evaluation, the valuation exercise; is that

right?

A. The constant sum question, yes.

Q. And then -- okay. And so I ask that question because when you talk about focusing on categories, so I -- based on what I just read you, I counted -- we have eight signals, right?

A. Correct.

Q. I counted, I think, eight steps that the respondent has to go through based on what we just went through. And then for the ranking exercise and -- and the -- the ranking exercises and the valuation exercise, there are seven steps, right?

A. Well, there are six -- even though there are six categories here.

Q. I'm sorry, six categories. Yes, six categories.

So you have eight -- eight steps, eight signals, six categories.

Now, in that discussion about what to focus on, do the eight steps and the fact that you have to take eight signals and map the content on those signals into six program categories, do you consider that at all as part

of the categories you have to -- part of the categories you have to focus on?

A. No. I mean, we're talking about apples and steaks. I mean, the question -- you know, when you look at parsing out these six categories, so with respect to the constant sum, there's categories here, right? That's very different than thinking about what are all the cognitive processes. Right?

Now, you've parsed this out into this very detailed, right, but that isn't -- that wasn't the focus of Mr. Laane's question, nor is that the consideration when you think about the number of categories for a constant sum question.

Q. Well, let's just say the number of things that you have to do in order to get to answer Questions 2b, 3, or 4a. Does -- from a survey researcher's standpoint, does that add to the complexity of the task?

A. Clearly, this is not a straightforward task that says, you know, how would you rate your health, excellent, very good, good, fair, poor? We are asking the respondent to, you know, consider these stations, think about

these six program categories, and now rank -- and now rank them.

So this is not, you know, just the most simplest of tasks, but it is not beyond the capability of these executives. And on what basis can I say that, right? We don't see notes here about confusion on the part of the respondent. We don't see missing data. We don't see, you know, any indications in the actual data that they don't understand how to do it.

So, yes, we can take and break down -- for any question that any survey researcher asks, we can break it down in every single cognitive step and it sounds like a lot, but I have to tell you survey researchers ask complex questions all the time.

How many times have you been to a doctor in the past 12 months? Right? That -- when you ask a respondent that, they have got to think, past 12 months, what are we counting as a doctor, does it count the phone call? I mean -- and respondents do that very quickly and compute -- compute a response.

So, yes, the -- it's actually a wonder

with respect to how we're able to process these cognitively, but respondents do do these. And when there is confusion --

Q. I think you have answered my question, Dr. Mathiowetz.

JUDGE FEDER: Excuse me. Do you know whether the researchers were instructed to make notations when they encountered confusion, if they encountered confusion?

THE WITNESS: I -- I do know that, as Mr. Trautman reported, that any confusion was supposed to be signalled to the director of the firm that did the interviewing, and no such confusion was noted.

JUDGE FEDER: Okay.

BY MR. OLANIRAN:

Q. Going back to the question, just in general, Question 4, the respondents have to complete -- have to make the percentages such that everything comes up to 100 percent. Otherwise, it's not a constant sum survey, correct?

A. That's correct.

Q. So to the extent that they don't -- they have no opinion or they don't know, there

really is no opportunity to -- to give an allocation less than 100 percent, correct?

A. Well, respondents can always report "don't know," and well-trained interviewers know to record that. If a respondent -- I mean, you do not force respondents to answer if they say, you know, I have really no way to -- to give you that answer.

Q. Doesn't Diamond actually prescribe ways to provide the options for respondents to be able to answer "I don't know" or "I have no opinion"?

A. All surveys allow respondents to take -- to report "don't know" or "I have no opinion."

Q. That wasn't my question. Actually, doesn't Diamond, your reference guide that you relied on, prescribe --

A. I believe she does.

Q. Okay. And with respect to Questions 2b and 3, which are ranking questions and don't have to add up to any number, does Bortz provide an opportunity for the respondent to say "I don't know" or "I have no" -- or say "I have no opinion"?

A. Once again, you don't see that on the questionnaire. You usually don't see that on a questionnaire --

Q. Usually don't see that on a questionnaire?

A. No, you usually do not see an explicit category for don't know, but interviewers are trained to record that when a respondent reports that.

Q. Just give me a minute. Let's go to page 389 of 3011. Are you there?

A. I'm there.

Q. Okay. And that -- the subtitle of that section is were some respondents likely to have no opinion, and, if so, what steps were taken to reduce guessing. Do you see that?

A. I do.

Q. And the second paragraph under that heading is -- starts with one of the options that the survey researchers could provide the respondents. Do you see that?

A. So --

Q. The paragraph that starts with "first."

A. I do.

Q. Okay. And the first option is the survey can ask all respondents to answer the question. Do you see that?

A. I do.

Q. And if you flip over to page 390 of that exhibit, the second option talks about the fact that the survey can use a quasi filter section to reduce guessing by providing "don't know" or "no opinion" options as part of the question. Right?

A. So that's the provision of an explicit "don't know."

Q. Right. Which you just testified that you don't typically see that on surveys?

A. No, that -- these are -- you're mixing up my testimony. What Diamond is talking about here is the provision on the questionnaire of an explicit "don't know" and read to the respondent. That is, are you in favor or against gun control laws or do you not have an opinion? That's an explicit, you know, no opinion/don't know.

That is different from what I just testified to, which is interviewers are trained that if a respondent volunteers "don't know,"

they record that. They do not -- no interviewer and no data collector wants to have data that represent guesses by the respondent.

So interviewers are trained to record "don't know." What Diamond is talking about here is the provision read to the respondent of an explicit "don't know."

Q. Well, the -- if you go back to page 389, the very first sentence in that paragraph B reads as follows: "Some survey respondents may have no opinion on an issue under investigation, either because they have never thought about it before or because the question mistakenly assumes a familiarity with the issue."

In Questions 2b and 3, what option does Bortz provide in writing for respondents that don't have an opinion or just don't know?

A. Right. So, once again, there is no explicit "don't know" provision in this questionnaire but --

Q. Is there --

A. Can I please finish?

Q. You've answered my question.

A. Well, but I think it's important for

the record to -- to note that the Bortz interviewers were trained to flag their supervisor when there was any indication by the respondents of confusion.

Q. Is this in Mr. Trautman's testimony?

A. Yes, it is.

Q. Let's go to question --

JUDGE STRICKLER: Before you go on, would it have been incorrect, improper survey construction to have included explicit "I don't knows" in the survey?

THE WITNESS: Well, can we get 50 survey researchers in here and we'll have a debate about that?

JUDGE STRICKLER: I think I'm actually talking to one, so you're the one I'd like to answer the question.

THE WITNESS: Well, we know that when you explicitly provide "don't know," respondents will gravitate to it, even if they actually do have an opinion, because they see that as an easy way to get out.

So in -- questionnaire designers are very cautious with respect to "don't know" or "no opinion" being explicitly read to the

respondent, but are always trained interviewers -- interviewers are always trained to take that information down or to note it rather than forcing a respondent to answer a question that they say "I have no idea."

JUDGE STRICKLER: Would it have been improper to have put an express "I don't know" as a choice in either Question 2, 3, or 4? In your opinion? Or you can say "I don't know."

(Laughter.)

THE WITNESS: Well, I don't think I have that option.

If you start to go down this path and this respondent starts to -- says "don't know," then I think you haven't screened properly for the right respondent. I mean, that really then would suggest you need to find the person who can answer these questions.

So if you -- if someone encountered -- if an interviewer encountered someone who said, well, I have no idea about that, I couldn't answer your questions, then I think that behooves the interviewer to say: I need to speak to someone who can answer these questions.

JUDGE STRICKLER: Given all that, would it have been improper to add an "I don't know" to either Question 2, 3, and/or 4?

THE WITNESS: I would probably recommend to Bortz to not include the explicit "don't know" just because I know that survey -- survey respondents like to sometimes take the easy route.

JUDGE STRICKLER: You say you wouldn't recommend it. Would it be wrong to do so?

THE WITNESS: There isn't really anything that's wrong or right in my industry. It's based on what your goal is analytically. And analytically here, we need people to assess these program categories, these five, six, or seven. So if they say "don't know" to one of them, analytically it's not going to be of much use.

JUDGE STRICKLER: So if I understand you correctly then, it wouldn't be wrong to add an "I don't know"; it's a judgment call depending on the person constructing the survey?

THE WITNESS: That's correct.

JUDGE STRICKLER: Thank you.

BY MR. OLANIRAN:

Q. Dr. Mathiowetz, let's turn to, if you still have Exhibit 3011 in front of you, page 388, the very first paragraph. Are you there?

A. I am.

Q. Okay. And in that first paragraph -- and I'll read the very first sentence: "When unclear questions are included in a survey, they may threaten the validity of the survey by systematically distorting responses if respondents are misled in a particular direction, or by inflating a random error if respondents guess because they do not understand the question. If the crucial question is sufficiently ambiguous or unclear, it may be the basis for rejecting the survey."

Do you see that?

A. I do.

Q. And in this quote, Dr. Diamond is warning about the potential perils of ambiguous or unclear questions, correct?

A. She is.

Q. And keeping that in mind, let's look at Question 2b in Exhibit 6020. Are you there?

A. Yes, I am.

Q. And this question states, in the beginning, that now I'd like to ask you how important it was for your system to offer certain categories of programming that are carried by these stations, referring to the stations -- distant signals carried by that system, right?

A. Yes.

Q. And then later on in the paragraph, the question asks the respondent to rank the identified program categories in order of their importance to the respondents, right?

A. It asks them to rank them with respect to their importance to the system in 2010.

Q. I stand corrected. Yeah. And to be clear, the system carried the programming in the form of signals, not in the form of the program categories that the respondent is now being asked to map the content of those signals into, right?

A. I'm sorry, could you repeat your question?

Q. I'm saying the system carried the programming in the form of signals, right?

A. Yes, they purchased signals, yes.

Q. Right. They purchased signals. And they are now asking the respondent to map the compensable content into the program categories used by the survey, correct?

A. Correct.

Q. Okay. And, again, in order to perform that ranking task, we went through the eight steps a few minutes ago that they have to do, right?

A. Yes, we did.

Q. Okay. And in the -- in Question 2b, the respondent has been asked to do this task, to do this ranking task, even though it just heard the list of the program categories for the first time in that -- in that question, right?

A. Well, that's the goal of a warm-up question, right? The whole reason that you put a warm-up question like Question 2b and Question 3, is to start to allow the respondent to get familiar with these program categories before you get to the key question of interest.

Q. Okay. And the question presumes that the respondent's system offered the different categories of programming that have been

identified with Question 2b, correct?

A. Yes. They were tailored to present -- so the Bortz questionnaire presents the categories that are related to the distant signals and only those program categories. So you see, as you look across the surveys, some people were faced with five categories; some six; sometimes seven.

Q. So in asking that question do you know what marketplace -- since the question presumes that the respondent's system carries those programs, the programs are somehow embedded in the signals they are carrying, right?

So my question is what marketplace was intended for the respondent to contemplate in doing their ranking exercise? Is it a marketplace with -- is it a hypothetical marketplace with regulation or without regulation?

A. Well, the question asks them to consider these categories in order of importance to your system in 2010, with 1 being the most important and 6 being the least important, that purchasing of those distant signals is within a regulated industry, right?

Q. Well, what I mean by "regulation," just to be clear, is whether or not section -- is it a marketplace where Section 111 is still in effect or is it a hypothetical marketplace where no such regulation exists?

A. Well, it's asking them about their importance to their system in 2010, since that regulatory market is in place with respect to Section 111 royalties in 2010. That's the reference that they are using.

Q. Okay. Well, let's look at Question 3. In Question 3, the interviewer is looking to know how expensive it would have been for the respondent's system to acquire non-network programming on broadcast stations identified by the interviewer. So the same eight signals and --

A. Same -- yes, same eight signals, six categories here.

Q. Right. And particularly interested in how expensive -- the ranking and order of how expensive it would have been if the respondent's system had to purchase the programming in the marketplace. Right?

A. Yes.

Q. Okay. And, again, in order to -- to respond to -- to perform this task, remember the eight steps we talked about earlier in Question 3, the respondent still has to do the same thing, right?

A. They still have to have the same frame of reference about these eight signals and rank them with respect to cost.

Q. And then with the marketplace also, they would be thinking about the 2010 marketplace where the Section 111 was in effect, because they had -- as you responded with respect to 2b, in 3, one would expect that they would be thinking about the same 2010 marketplace, right?

A. Except the question does start out by saying "directly in the marketplace." So these -- you know, these program categories aren't purchased directly in the marketplace when you're talking about these distant signals.

Q. That's correct. I'm not sure I understand what's your point.

A. So there's a phrase in the beginning of Question 3, right, that they want to acquire

non- -- it basically sets the frame of reference for the respondent to acquire these non-network programming if they could purchase them directly in the marketplace, meaning you go out and purchase the program category, not the distant signal.

Q. So the frame of reference in 2b is different from the frame in 3?

A. Yes.

Q. Okay. And you -- with regard to 2b, they are looking at a marketplace where Section 111 -- the compulsory license can exist, correct?

A. Correct.

Q. And then in Question 3, they are not looking at that; they are looking at -- excuse me, one second.

In Question 3, they are looking at a situation where the cable system itself actually goes into the marketplace to acquire programming?

A. It is what the phrasing of the question says.

Q. At least that's your understanding of it?

A. Yes.

Q. And were those individual programs or --

A. Well, I can only interpret what it says there, if you could purchase the programming directly in the marketplace.

Q. Okay.

JUDGE STRICKLER: Excuse me. When you see the word "programming" there in Question 3, do you understand that to mean a category of programming or an individual program within -- within a particular category?

THE WITNESS: To me, the way it's being phrased, that programming, it's a -- I think the respondent -- given that they've already been exposed to these questions or these categories of programming, I would think that the respondent's framing them is about those program categories.

JUDGE STRICKLER: So it would have been more accurate to say if your system had to purchase that programming category directly in the marketplace?

THE WITNESS: That -- that could be a refinement of that question, yes.

JUDGE STRICKLER: Do you think it's ambiguous without the word "category" before the word "directly."

THE WITNESS: Given that the respondent is once again listed these six program categories, I don't think it's ambiguous.

JUDGE STRICKLER: You think the word "programming" and the phrase "programming category" in the minds of a respondent would be equivalent?

THE WITNESS: Well, they may be considering individual programs within those program categories, but they're not -- you know, the response test that they're being faced with is to answer about these six program categories.

So they very well may have been thinking about one particular type of, for instance, movie in answering that or a particular type of program with respect to live professional and college sports, but they know they have to answer within these six program categories.

JUDGE STRICKLER: Thank you.

BY MR. OLANIRAN:

Q. The question is not clear, is it?

A. Well, I think it is clear.

Q. You think? Could -- could the respondents have been thinking about buying -- purchasing bundles of programming, the program categories? Could they have been thinking about that?

A. Well, whether they're thinking about program categories or programs within those program categories, I don't understand why they are -- what the difference is there.

Q. Well, because they are --

A. I mean, they're still going to end up, right, in a response category ranking the whole categories. And so, for instance, let's just look at this particular respondent, who says live professional and college team sports is the most expensive, right?

Well, we don't know if, when they decided that that ranked the highest, whether that was because the entire category is expensive or that they know to purchase a particular program within that category drives those costs way up.

Q. If you were -- if the system was purchasing individual programs and that's what's in the mind of the respondent, is that purchase in your mind different from, say, if the respondent is thinking about purchasing bundles of programming? Do you see a distinction in those two types of purchases?

A. Not with respect to thinking about ranking the expense of those. So, you know, they have to consider the entire category. What was the determining factor that drove live professional and college team sports to the first? Was it the entire category or was it because they knew that in order to purchase, let's just take NHL hockey, that they would have to -- that that was quite expensive and that's what drove up that whole category.

Q. Now, in just -- in a standard survey -- in survey practice, it's necessary to describe the same construct using consistent language, isn't it?

A. That's a vague and ambiguous question, so could you be more specific?

Q. Let me simplify it. If you are trying to describe a thing in the survey practice, but

you have to use consistent language for that thing every time you make a reference to it?

A. Ideally, you do want to use the same language. Sometimes you feel you need to embellish that during parts of the survey.

Q. Okay. So let me ask you about the language in Question 3. Question 3 begins by telling the respondent that the question would be about how expensive purchasing programming directly in the marketplace would have been.

Do you see that?

A. Yes.

Q. And then in the second sentence, the question then refers to relative cost of the seven program categories. Do you see that?

A. Yes.

Q. And then in the next sentence, it reverts back to ranking the program categories in order of how expensive. Do you see that?

A. Yes.

Q. Then the sentence follows -- the next sentence says that -- excuse me.

The next sentence says -- now refers to a cost ranking. Do you see that?

A. I do.

Q. Now, if you were designing this question, you wouldn't use three different phrases for the same -- for the same thing, would you? Well, strike that.

The task that's being required in this question is to rank -- excuse me -- is to rank programming in order of how expensive, correct?

A. Expensive -- see, to me, those are similar terms, "expense" and "cost."

Q. I understand. But do you think it could be ambiguous as an accounting concept, for example, expense versus cost?

A. I don't think it adds ambiguity in this question. And, once again, you know, we don't see indications of the respondent's -- indicated confusion.

Q. Now, if you were drafting -- if you were designing this question, would you have used those three different phrases, instead of just consistently referring to how expensive?

A. This is two different phrases, right, expensive and cost?

Q. Well, it's how expensive, relative cost, and cost ranking.

A. I think in an ideal world, it would

have been useful to have the same language throughout that question.

Q. Thank you.

JUDGE STRICKLER: Do you understand cost to mean dollar cost, opportunity cost? Both? Neither? Or something else?

THE WITNESS: Well, given that they introduced this as expensive and then used the word "cost," I think the frame here is dollar costs.

JUDGE STRICKLER: So you -- so you understand that cost, without the phrase "expense" or "expensive," could mean other things, other than just dollar cost, but you think expensive refers -- somehow grounds you in dollar cost?

THE WITNESS: I -- I do. And once again, I don't worry as much -- these are warm-up questions. These are really meant to try to drive home the issue of these five, six, or seven categories that are going to be central to Question 4.

So I'm not as concerned about the language in Questions 2 and 3, as I would be in Question 4.

JUDGE STRICKLER: I'm glad you said that because this phrase "warm-up" has been troubling me. I'm not exactly sure what it means. I mean, you could have shown clips from the different categories. That would have warned them up quite nicely as well.

If Questions 2 and 3 don't provide information relating to Question 4, are you saying that the only benefits of Question 2 and 3 are that they acclimate the survey respondent to the categories such that when you finally give them Question 4, they're already thinking about the categories, regardless of how they answered Questions 2 and 3?

THE WITNESS: From my perspective, I include warm-up questions. And you hate to burden a respondent with a warm-up question with a question you're really not going to use analytically, but, you know, we want them to really understand these categories.

And so let's clear out the ambiguities about these program categories and understand the nature of a ranking task before we get to this key valuation question. So from my perspective, I have no problem asking one or

two questions to a respondent so that they understand what we're talking about with respect to these program categories and what it means to make these tradeoffs across these before we get to the key valuation question.

JUDGE STRICKLER: Which tradeoffs are you referring to?

THE WITNESS: Well, meaning, you know, in a constant sum, you have to allocate points across these program categories. To me, that's a tradeoff.

JUDGE STRICKLER: So Questions 2 and 3, the warm-up questions, are also making tradeoffs?

THE WITNESS: Yes, because once I rank one of these program categories 1, I have -- I have to -- I can no longer assign a 1 to any other of the program categories.

The task isn't quite the same on the constant sum, because, of course, you can have equal allocations.

JUDGE STRICKLER: Thank you.

BY MR. OLANIRAN:

Q. Let's go to Question 4a. Before I ask you specific questions about Question 4a, on

page 13, paragraph 34 of your testimony, your direct testimony, you -- do you have it?

A. What page number again?

Q. 30 -- page 13, I'm sorry, paragraph 34 of your direct testimony.

A. I have it. Thank you.

Q. Okay. And in that, in paragraph 34, you state that the constant sum methodology is a well-established market tool. And you also quote Samuel Book. And, in fact, you then go on to identify three additional sources of support for that statement, Leonard Reid, Joel Axelrod and Robert Crandall.

Now, based on the discovery information you provided to us, Samuel Book's testimony was submitted in August of 1991, which is 27 years ago; is that correct?

A. Yes, this cites the 1989 proceedings, yes.

Q. And Leonard Reid also was submitted in 1991, which also is 27 years ago, right?

A. Yes.

Q. And Axelrod's testimony would have been about 20-plus years ago. It was 22 years ago. It was submitted in 1996, right?

A. That's correct.

Q. And Robert Crandall's testimony would have been submitted about 2009, which is about nine years ago, right?

A. Well, or seven years ago at the time I was writing this.

Q. Fair point.

And these old testimonies were not addressing the Bortz questionnaire of the -- that are being presented in this proceeding, are they?

A. No. They're addressing the issue of a constant sum methodology.

Q. Okay. But the -- the issue of constant sum methodology was in the context of whatever Bortz report was submitted in those proceedings, correct?

A. That's correct.

Q. Okay. Did any of these witnesses -- were they in any way involved, to your knowledge, in the development of the current Bortz survey?

A. I wouldn't know.

Q. Okay. Now, digging into Question 4 a little bit, so the respondent is tasked with

making a certain -- going back to Exhibit 6020, and then sort of digging into Question 4. The respondent was tasked with making certain -- making a certain relative valuation of these different program categories, right?

A. Correct.

Q. And according to Bortz, the allocation represents relative marketplace value of the program categories at issue in this proceeding, right?

A. Correct.

Q. And for this task, the respondent, again, had to go through those eight steps we talked about, which I won't repeat, earlier in our discussion, right?

A. Yes, they do have to go through a series of steps that they can integrate to -- to produce this response.

Q. And so Question 4 opens with the statement that -- that the interviewer would like the respondent to estimate the relative value to the respondent's system of programming broadcast by the signal identified as carried by the respondent in 2010. Do you see that?

A. Yes. That isn't the exact words that

are used, but -- but that's the -- that's a summary of what's being presented.

Q. Okay. Now, again going back to the question of marketplace, in Question 2b, you said the marketplace they would have been thinking about in 2010 was the marketplace in which the compulsory license scheme of Section 111 was in effect, correct?

A. Correct.

Q. In Question 3, I believe you said they would have been thinking about a marketplace in which they purchased directly from the market, correct?

A. Correct.

Q. Now, in Question 4, what marketplace was the interviewer -- was intended for the respondent to be contemplating in making this valuation -- not valuation -- this allocation task?

A. So, clearly, here they are not being referenced to, as they are in Question 3, to directly in the marketplace. So they would be back in the marketplace of the Section 111 royalties.

Q. Okay. And I want to tax your survey

expertise, again, if you will. Did you understand from the review of the questionnaire that the program categories used in 2, 3, and 4 were intended to be the same?

A. Yes. And I do realize that in Question 4, they did expand on the verbiage around the description of those categories.

Q. Now, in -- if you look at the description of syndicated shows, there's a special, for example, when you look at how they are identified, how that category was identified in Questions 2b and 3, merely referred to syndicated shows, series, and specials. Do you see that?

A. Yes.

Q. And then when you go to Question 4, the label was -- the title -- the category was expanded on a little bit by adding produced by or for any of the commercial stations.

Do you see that?

A. Are we looking at the syndicated shows category?

Q. I'm sorry. Distributed to more than one station.

A. Right.

Q. Okay?

A. Yes.

Q. And then if you look at the news programming, which is the one I was looking at earlier, in Question 4 it's news and public affairs programs produced by or for any of the commercial stations. Right?

A. Yes.

Q. And then if you go back to Questions 2b and 3, that category, assuming it was intended to be the same, is described as "news and other station-produced programs," right?

A. Correct.

Q. And, again, to the extent that these categories were intended to be the same categories, would you -- from your survey experience, the language is inconsistent between -- as between Question 2 and 3 and Question 4, isn't it?

A. Well, the categories haven't changed, so there's a consistency with respect to, in this case, the six categories, but obviously they've expanded upon the language here in the description of these six categories.

Q. You don't think the respondent would

be confused where in Questions 2 and 3 they just had one category, the one label, and then in Question 4, they had a different category and --

A. Well, I think it's important -- let's look at the full content of this question, right? The interviewer says: "I'll read each of the six programming categories we've been discussing again to give you a chance to think about them."

Okay? So right there, the interviewer is signaling to the respondent that I'm going to reread this litany of these six program categories. I'm not changing the categories, right? So they've expanded the language, absolutely they have, but clearly the interviewer is referencing: But these are the same six programming categories that we've already been discussing.

Q. If the interviewer is doing that, why not just leave the program descriptions the same way they were -- they are in Question 2b and Question 3?

A. That would have been a question you'd have to have asked Mr. Trautman.

Q. If you were doing it, how would you have done it differently?

A. I would have probably used consistent language descriptions throughout.

Q. Now, you talked a little bit about -- with Mr. Laane about the WGN-only questionnaire. Do you recall that --

A. I do.

Q. -- conversation? And you actually agree with Bortz's creation of a separate questionnaire for WGNA-only systems; is that correct?

A. Well, I think it was a step towards addressing issues that have been raised by -- in rulings in the past concerning the compensable. So they made a decision to do this for WGNA-only. Clearly, it's applicable to all WGNA stations, but for ease of questionnaire administration, they chose to do these summaries just for WGNA-only.

Q. And the WGN-only questionnaires, unlike other questionnaires, actually provided advance program summary to the respondents before the actual interview took place; is that right?

A. That's correct.

Q. And this is an opportunity that was not afforded the non-WGN-only respondents, right?

A. That's correct.

Q. And the purpose of this special process for WGN-only system was to allow WGN-only system respondents to consider relative value only of compensable programming on WGNA, right?

A. Correct.

Q. And is it fair to say that in Bortz's view, without -- in view -- strike that.

Like in view of the designers of the survey that without this special treatment for the respondents on WGN-only systems, that those respondents could not distinguish between compensable and non-compensable programs on WGN, right? I know that was convoluted.

A. Yeah, can you -- can you rephrase that question. That was a complex question.

Q. Fair enough. Fair enough. But the rationale for this special treatment is that, but for the special process, the respondents on WGN-only systems could not distinguish between

compensable and non-compensable programming?

A. It is to remind the executives who are serving as the respondents about what are compensable and not compensable programs, yes.

Q. Well, that's not quite -- you didn't quite answer my question. My question was that, but for this special process, is the rationale that the respondents could not make that distinction between compensable and non-compensable?

A. I do not like the use of but-for questions, which are difficult to respond to. I am not saying that executives couldn't know what was compensable, but there's no reason for an executive who is transmitting WGN to have a complete understanding of what are the compensable and non-compensable programs that are being aired.

Q. If I understand your testimony correct, it's not required but it helps? Is that a fair way to describe your response?

A. Well, clearly in previous considerations and rulings, there was a lot of discussion about compensable programming on WGN and the problem that respondents -- that's --

you know, you've been talking about parsing out information. Now you think about these program categories and the WGN-only respondents have to think about, okay, am I thinking about compensable or not compensable?

This makes their respondent task easier.

Q. Now, there are other systems that carry WGNA plus other distant signals, correct?

A. That's correct.

Q. And they weren't accorded the same -- the same treatment, correct?

A. That's correct.

Q. And now can we look at -- do you have Mr. Trautman's testimony on you?

A. Yes.

Q. Let's go to Appendix C.

JUDGE STRICKLER: Which testimony?

MR. OLANIRAN: Mr. Trautman's testimony, that's Exhibit 1001.

JUDGE STRICKLER: His direct?

MR. OLANIRAN: The direct, yes.

THE WITNESS: The direct?

MR. OLANIRAN: Yes. Yes.

THE WITNESS: Appendix C, did you say?

MR. OLANIRAN: Yes.

BY MR. OLANIRAN:

Q. Are you there?

A. In this copy, it's not clearly marked, but -- Appendix C, but I assume you're looking at the WGNA America 2013 program summary?

Q. I was actually looking at 2010.

A. I don't have that in this binder.

Q. You're not looking at Appendix C-1?

A. I don't have something called C-1. It goes -- wait, wait, C-1. Sorry. I have to flip to the back.

JUDGE STRICKLER: It doesn't have the word "appendix" on it. It just says C-1.

MR. OLANIRAN: I'm sorry.

THE WITNESS: I did find a page that said C-1, Appendix C-WGN-only survey instruments. Is that what you're looking at?

BY MR. OLANIRAN:

Q. That should be it.

MR. OLANIRAN: Can I approach, Your Honor?

JUDGE BARNETT: You may, yes.

JUDGE STRICKLER: It's just --

JUDGE BARNETT: There are two page

C-1's.

THE WITNESS: Yes.

JUDGE STRICKLER: That will throw you.

JUDGE BARNETT: Judge Strickler's eagle eye figured that one out.

BY MR. OLANIRAN:

Q. I wish all our other problems could be that easy to solve, right? So let's take a look at question -- Question 2 of -- so we're looking at the 2010 template for the WGNA-only program questionnaire, right?

A. Yes, we are.

Q. And so in -- if you look at Question 2, before the interviewer even asks any question about ranking or valuation, the first paragraph talks about the nature -- nature of the programming, correct, that they want the respondent to focus on, right?

A. Are you up at the top of page C-2 --

Q. Yes, I am.

A. -- where it says "this survey concerns"?

Q. Yes.

A. Okay.

Q. And then the middle paragraph -- this

next paragraph focuses the questions on programming on WGNA, right?

A. Well, it says that they want to talk about the WGNA programming and they'd like to send them a summary before they do the interview.

Q. So, I mean, before they even get to the questions, you have three paragraphs already explaining the programming of interest to the respondent, correct?

A. You haven't explained the program categories to them at this point. You've simply said, you know, we're going to be talking about WGNA.

Q. Okay. And -- and -- but it does help focus the respondent on what -- the path that the questioning is going to lead in, does it not?

A. Certainly, it does, yes.

Q. Okay. And so these first three paragraphs, they're geared to elicit information -- makes it clear that they are -- that the interviewer is interested in information about compensable programming, right?

A. I'm just trying to remember if they use that particular terminology. They certainly don't use the term "compensable," but they are describing the concept to the respondent, yes.

Q. Thank you. That's -- and then let's -- let's look at the programming summary that's attached -- the 2010 programming survey, if you will.

Are you looking at it?

A. I've got it, yes.

Q. Okay. And so in the -- in this -- this document was provided to the respondent in advance, correct?

A. Yes.

Q. And then it has program examples, and it has total number of programs, total hours for each program, and the date part summary for the programs. Do you see that?

A. Yes.

Q. And for the category news and other station-produced programming, the summary identifies very specific shows such as Primetime News, WGN Mid-day News, Cubs, White Sox, and Bulls pre- and post-game shows. Do

you see that?

A. Yes.

Q. And the category for the live team sports, the summary identified very specific sports, Cubs baseball, White Sox baseball, and the Bulls. Do you see that?

A. I do.

Q. And those teams are clearly playing other teams, presumably, if it's a live -- live team sports, correct?

A. Yes, one would hope so.

Q. And --

JUDGE STRICKLER: Unless it was the Knicks.

(Laughter.)

BY MR. OLANIRAN:

Q. And so this identification of program patterns is sort of consistent if you look at all of the -- all the years' program summaries. I don't know if you had a chance to review this in your -- in your review of the questionnaires.

A. I had looked at these program summaries, yes.

Q. Okay. And so now for the movie

category for 2010, it identifies only feature presentation and feature prime presentation. Now, this is not exactly the same level of detail when compared to the other categories, is it?

A. Well, it is akin to, you know, prime news and midday news or akin to, you know, the description of one-time-only specials and special reports.

Q. Do news programs have titles other than just news?

A. Not that I'm aware of.

Q. Okay. And throughout the four years, movies are referred to basically either as just simply movies or I think there was one year that they used the phrase "feature" -- in 2010 they used feature presentation, but in other years, I think they also used just the word "movies," right?

A. I'd have to go and look at them, but I think you're correct.

Q. Okay. And in your mind, just labeling the category as movies is the equivalent of actually identifying White Sox or Cubs baseball or Chicago Bulls basketball?

A. You know, I see them as -- as similar because they don't list all of the Cubs' baseball games, the details of those particular games. They -- it's a broad category. One is a feature movie presentation. One is Cubs baseball. I -- you know, they're not listing all of the detailed, you know, exact, you know, Cubs, you know, world series -- well, it wasn't the world series at that point, but, you know, they're not listing, you know, the detail of who they played.

Q. So in your view, the respondent equates the -- in your view, in the ears of the respondent, a program category title feature presentation of movies resonates just as well as a program category of sports identifying the major sports franchises that have programs on that -- on their signal?

A. I think they're self-explanatory in that, you know, a movie presentation are movies. I mean, they could have listed, you know, all of the movies. I'm not -- with 108 hours of programming, that would be a lot to list.

The idea here is just to remind the

respondent that feature presentations are compensable and need to be considered in their valuations in Question 4.

JUDGE STRICKLER: Excuse me, Professor. You say they are self-explanatory, but there are two categories within movies. There's feature prime presentation, and it lists 8.5 hours, and there's feature presentation, which is 108 hours.

Do you think "feature prime presentation" is self-explanatory?

THE WITNESS: You know, I'm not in this industry, so I assume that it has to do something with the time at which it's on, which is on 7 p.m. on Saturday. So the fact that they've provided the time slots that correspond to these, these presentations, should anchor it for the respondent with respect to what movies they are talking about.

JUDGE STRICKLER: So you understand, and with the same caveat I would have, not being in the industry, that prime represents prime time as opposed to a more popular movie.

THE WITNESS: Could have. I'm not sure which -- what "prime" refers to here,

quite honestly, but I did think when I first saw this that prime, because it was at 7 p.m. Saturday night meant time slot, not, you know, necessarily Academy Award winner.

JUDGE STRICKLER: Thank you.

BY MR. OLANIRAN:

Q. So in your mind, if the program category has simply listed baseball instead of Cubs baseball, would that have made a difference in how the respondents were trying to formulate their response?

A. I'm just trying to think if WGNA does any other baseball that isn't either Cubs or White Sox, and I don't know that, so --

Q. What if the description had just said basketball without mentioning Bulls?

A. Well, once again, I don't know if there are other categories -- I don't know sitting here today if there's other categories of basketball that are transmitted on WGN.

Q. Dr. Mathiowetz, I just wanted to get some clarity with respect to your view of the "other sports" category. I think in your testimony you disagree with the creation of the "other sports" category. And if I recall your

testimony yesterday correctly, you said you didn't see any justification for it, and one of the factors you mentioned was that it didn't have any air time. Is that correct?

A. I think there are two separate points. So, first, no, I didn't see in any of the Program Suppliers experts' justification for -- you know, a clear-cut justification for this "other sports" category.

And then I think I went to talk about the fact in the Horowitz survey where we see this "other sports" category using examples looking at WGNA plus Public Television, right, when you look at how that category is described to respondents, it's describing that with shows that were not aired on those stations between 2010 and 2013.

Q. Are you talking about WGN-only stations or WGN plus stations?

A. WGN plus stations. That was one of the examples we talked about. And I also did talk about WGN-only.

Q. Okay. And what justification would you have had to see to justify the "other sports" category?

A. So, you know -- so, first of all, my understanding -- and, you know, I'm new to these proceedings, so maybe my understanding is incorrect, but that there were an agreed-upon set of program categories, right, that have been used traditionally.

And those continue to be used, even though for some of them the amount of air time has, you know, significantly decreased in some of those categories over time. So one is kind of the long-established categories.

So what would justify bringing in a new category? Well, if you see an entirely different area of programming that wasn't originally represented in these five, six, or seven categories, then that would be justification for including a new category.

Q. And so the other sports category -- with regard to Mr. Horowitz's survey, the other sports category actually had, relatively speaking, a significant allocation in all four years, correct?

A. Well, a significant valuation by the Horowitz respondents, yes, but I already testified that part of that is in part related

to the fact that it's misleading and erroneous information in the description of that category.

Q. In all instances or in just some?

A. I'd have to go back and look. So, once again, here with respect to the identification of the erroneous information, I'm relying on Mr. Trautman's comparisons and his enumeration because, once again, I'm not an industry specialist.

My bottom line as a survey methodologist is that if the program category description is erroneous, then you've misled the respondents to think that there's more content in that category than there actually is.

Q. Now, are you basing this on just air time?

A. No, I'm basing it on the fact that when Mr. Trautman looked at what was actually described as "other sports" and what was actually aired, he identified in his written Rebuttal a litany of erroneous information that was provided to the respondents with respect to the "other sports" category.

Q. Can I -- I need to put down what you are describing as erroneous.

A. Well --

Q. What are you characterizing as erroneous?

A. Well, when you say to the respondent, you know, to evaluate a program category that includes figure skating, NASCAR, and I forget what else, and there was no airing of NASCAR or figure skating on that -- on those channels -- on that particular distant signal, that is misleading information.

Q. Is this including that -- does the question -- does the Horowitz questionnaire say that -- suggest that the program, the program category includes the show or it describes the category and says "such as these shows"?

A. I think we have to look because they used both examples that list specific shows as well as "such as," suggesting to the respondent that these are illustrative of the programs that actually did air. And we can look at the specific question wording and document that.

Q. Is the questionnaire suggesting programs that did air or suggesting programs

that fall within that category?

A. The description of the program category includes both.

Q. Okay. And with regard to the multi-system respondents and JSC also -- the Bortz survey also has respondents that responded to multiple systems, did they not?

A. Right. We looked at that table yesterday.

Q. Yes.

A. And on average --

Q. I understand that. I was here yesterday.

A. Okay. Sorry. Don't mean to bore you.

Q. So do you understand -- do you know why respondents would have more systems to respond to?

A. Yes.

Q. Why is that?

A. Because -- well, there are two reasons. You want to talk about it with respect to Bortz or with respect to Horowitz?

Q. Definitely Bortz.

A. Okay. So with respect to Bortz, right, if they start at the cable system, the

sampled cable system, and if that person says, Uhm, I'm not responsible for that, you need to go up to, for instance, the regional person, then if that regional executive was responsible for more than one cable system that had been included in the sample, he or she was then reporting for those multiple systems.

Q. Okay. Now, on the Horowitz side, how did they approach their screening process?

A. They started at the national or regional level and, if they had to, moved down, but started at the national level.

Q. Okay. With regard to your understanding of the cable industry, just in general, would you say that over the -- over the last at least five to ten years there has been more consolidation in the -- of cable systems or not?

MR. LAANE: Objection, Your Honor, the witness has already testified she is not an expert in the cable industry.

JUDGE BARNETT: Sustained.

MR. OLANIRAN: I have no further questions, Your Honor. Thank you, Dr. Mathiowetz.

THE WITNESS: Thank you.

JUDGE BARNETT: Thank you, Mr. Olaniran.

Mr. Cosentino, how much questioning do you have?

MR. COSENTINO: Ten, 15 minutes.

JUDGE BARNETT: We're going to power through then before we take our break. It's just the temperature is going up in here. Feel free to take your jackets off. Do not suffer here. There's no point.

THE WITNESS: You've placed the burden on him between all of these people and the break.

(Laughter.)

JUDGE BARNETT: A method to my madness.

MR. COSENTINO: I'm going to take eight minutes.

CROSS-EXAMINATION

BY MR. COSENTINO:

Q. Good afternoon, Dr. Mathiowetz. I'm Victor Cosentino for the Canadian Claimants.

A. Good afternoon.

Q. I think this morning you touched on

the issue of a pilot study in 2009 for the Bortz survey; is that correct?

A. Yes.

Q. Did you review that pilot study?

A. I -- I did not review that questionnaire. I only know that they did conduct that pilot study.

Q. Okay. Can you explain what a pilot study is?

A. So when you're making changes to a questionnaire, it's often helpful to take that for a test drive, so to speak, to see if respondents understand it, to see if there are problems in the administration of that questionnaire.

Q. Is a pilot study the same as pre-testing?

A. A pilot study is a particular type of pretest in which it's more like a dry run of the questionnaire rather than other types of pre-testing.

Q. When you say other types of pre-testing, what do you mean?

A. So there is a whole cadre of activities that we as survey researchers use

with respect to pre-testing a questionnaire. Usually, when it's the first time you're putting a questionnaire together, there are things called cognitive interviews. You might run focus groups. You might debrief respondents. So there's -- there's a whole bunch -- a number of different methods.

Q. Is the goal to make sure that the respondents understand the questions being posed?

A. Yes.

Q. Are you aware of whether any type of focus groups or exit interviews or any of that type of things were done in the 2009 pilot studies?

A. Well, we don't want to call them exit interviews.

Q. I'm sorry.

A. That's a whole other work. We don't want to open that can of worms.

Q. Okay.

A. You know, my understanding is that, no, that they redrafted. I wasn't privy to all of the things that led up to that pilot test.

Q. Okay. In questionnaire design, is it

important to -- would you acknowledge that this is a fairly complex question, Question 4?

A. It is a complex question, but it certainly is one that has been fielded -- a question similar to it has been fielded for 20 or 30 years.

Q. Okay. But if you were making changes to it, would you engage in some type of pre-testing?

A. Do you mean apart from a pilot test?

Q. Yes, apart from a pilot test.

A. It would depend on how significant the changes were to the wording that had been used in the previous administration.

Q. Okay.

JUDGE STRICKLER: Excuse me, Professor. You say that although it's a complex question, Question 4, it has been used for 20 or 30 years.

Are you making reference back to previous Bortz survey iterations?

THE WITNESS: Yes, I am.

JUDGE STRICKLER: Have you seen this level of complexity in other survey questions, other than in the Bortz survey?

THE WITNESS: You mean apart from these hearings?

JUDGE STRICKLER: Yes.

THE WITNESS: Oh, yes. This is nowhere near as complex as some of the questions that I've seen.

JUDGE STRICKLER: Thank you.

BY MR. COSENTINO:

Q. Okay. Also -- and I want to jump now to your earlier testimony regarding the Ford Ringold study. And you indicated that small sample sizes in the Ford Ringold study rendered the results unreliable; is that right?

A. Right. And they're -- now we're referring to the discussion I had with Mr. Cho with respect to unreliable. That is they have -- you know, it is a small sample, by definition, so it has large confidence intervals around each of those point estimates.

Q. Okay. And that's one of the things I wanted to clarify, was which meaning of "unreliable," okay. And it has to do with the wide range of the confidence intervals?

A. Correct.

Q. All right. And why does small sample

sizes lead to that type of unreliability?

A. Should we put the formula up for computing variance? So variance takes into -- is the square root of PQ divided by N, where N is the sample size. So the smaller the sample size, the larger this number that you're taking the square root of.

So when you have a large sample size, right, that number begins to get small, all other things being equal in the design of the survey.

Q. Okay. And is that also the case, though, if your universe is small? Do you have wide confidence intervals if you're starting with a small universe?

A. Standard errors in confidence intervals come from having -- from -- from sample estimates, not from taking a census. When you start to take a complete census and you have 100 percent response rate, you don't generate confidence intervals because confidence intervals have to do with being able to draw inferences from a sample to the population of interest.

Even if you have -- if you have --

start out with a small universe, then your sample is going to be small by definition.

Q. If you try and question the entire universe and you don't get 100 percent, do you have to treat it as a sample?

A. Oh, this is really ambiguous in the literature. So a census is only a census if you take and interview all 100 percent.

Q. Okay. But if you're studying a population and you attempt to get 100 percent of the population and then you don't, does that convert your study to a sample or is it still a -- are we still talking about a population where you're not worried about confidence intervals?

A. Once you fall back from 100 percent census, you're making inferences from whatever data you have collected to that larger population. And because you don't have observations on every one, you have to express some degree of uncertainty, typically expressed in confidence intervals.

JUDGE STRICKLER: Is that a random sample any longer, if you're seeking to do a census and then you only get 90 percent

response? That's not a random sample anymore, is it?

THE WITNESS: No, it isn't.

JUDGE STRICKLER: How do you do confidence intervals with that?

THE WITNESS: This is -- we're falling into the world that appears in no statistics books, so, you know, everything that we see with respect to statistical inference is based on the assumption of a simple random sample.

JUDGE STRICKLER: Is that where you would then do bootstrapping or something like that out of the --

THE WITNESS: Right.

JUDGE STRICKLER: -- out of the 90 percent to come up with something that has some sort of statistical probability?

THE WITNESS: Right. So what you need to do when you're in that world of you've tried to get 100 percent but you didn't get it, but you didn't draw a random sample, is you're trying to convey to your readers that you don't have a point estimate that has observation on everyone.

So bootstrapping is one approach that

people do to try to provide some -- some suggestion of the variability around a point estimate from this imperfect census.

JUDGE STRICKLER: Thank you.

BY MR. COSENTINO:

Q. So in your report, you -- when you talk about the unreliability on this issue of Ford Ringold because of a small sample size, you said -- you say unlike Bortz. Now, would you consider Bortz to have a large sample?

A. Bortz does have observations on 100 to 200 cases per year. So, yes, it begins to -- it definitely has a much larger sample size.

Q. Okay. And within that sample, Canadian signals appear only a handful of times, let's say 15 or less.

A. Right.

Q. Does that affect the confidence intervals around the Canadian valuation reports?

A. Yes. So you have -- you don't have a lot of observations within Bortz around those Canadian -- the valuations of those Canadian signals.

Q. Okay. And does that affect the

reliability then of Bortz with regard to the valuation of the Canadian signals?

A. Yes.

MR. COSENTINO: Thank you. I have no further questions.

THE WITNESS: You did come in under eight minutes.

(Laughter.)

MR. COSENTINO: I have to be very careful with my time.

JUDGE BARNETT: Thank you, Mr. Cosentino.

MR. LAANE: Your Honor, I am going to have a few questions. I don't know -- I'm happy to do them after the break. I just didn't want to get lost in the shuffle.

JUDGE BARNETT: A few?

MR. LAANE: Yes, Your Honor.

JUDGE BARNETT: Can you estimate a time?

MR. LAANE: Five to ten minutes.

JUDGE STRICKLER: Just for the questions or the questions and the answers?

(Laughter.)

MR. LAANE: Depends on the witness,

Your Honor.

JUDGE STRICKLER: It always does. You never know how you're able to estimate an examination when you don't know how much time the witness is going to spend answering.

JUDGE BARNETT: If we go ahead, then we can excuse Professor Mathiowetz. Is that correct?

MR. LAANE: Yes.

JUDGE BARNETT: Yes. Then let's do that.

THE WITNESS: Thank you.

REDIRECT EXAMINATION

BY MR. LAANE:

Q. Good afternoon, Your Honors, Dr. Mathiowetz, and I will try to be quick about this. First, if you could --

A. And I will too.

Q. First, if you could turn to your written Rebuttal testimony and let's look at page 28. And you were asked by Mr. Cho about adjusting Dr. Frankel's estimates. Am I correct that really what you did with Dr. Frankel's estimates was he had reported standard errors, and to get an

apples-to-apples, you converted those into confidence intervals?

A. That's correct. I have done no new computations. I've just made sure that, because Bortz had produced confidence intervals, that we could look at Dr. Frankel's estimates as confidence intervals rather than standard errors.

Q. Okay. And did you or did you not do an adjustment in there for the issue of independence that you were discussing with Mr. Cho?

A. I did not. I took at face value Dr. Frankel's standard errors and just made -- turned them into confidence -- 95 percent confidence intervals.

Q. And did Dr. Frankel or Mr. Horowitz do any adjustment for the independence issue?

A. Not to my knowledge, no.

Q. Okay. You haven't seen anything to that effect in the record?

A. No, I have not.

Q. Okay. Now, you mentioned to Mr. Cho that the relative impact of the independence issue was different for Bortz and for Horowitz.

Can you explain that for us?

A. Well, if we remember back to yesterday afternoon when we looked at the mean number of cable systems that each respondent was responding for, we think of those as -- I'll refer to those as clusters, right?

The average cluster size in Bortz is 2.2 cable systems that each executive is reporting for. If we think about the Horowitz, we go back to those numbers, the average -- the cluster size was about, I think, 8 or 9, if I remember correctly from that slide.

So what you see is that cluster size -- when you compute standard errors, taking into account cluster size, the size of the cluster is what drives up and inflates the standard error. So it's almost as if it's -- once again, it's a formula we could go into, but you inflate the standard error estimates that we see in either Bortz or Horowitz by a product of the average cluster size and value called the inner correlation coefficient.

So cluster size, you know, we know here the cluster size. Given that the cluster size for Horowitz is four times that of that we

see in Bortz, we can make some pretty clear-cut assumptions that the impact on the standard errors is going to be about four times as large for Horowitz than for Bortz.

Q. Okay. So what does that mean for the Judges if and when they are assessing the utility of the Bortz confidence intervals and the Horowitz confidence intervals?

A. It means that had that adjustment taken place for Bortz, you'd see a somewhat larger confidence interval, and for the Horowitz estimates produced by Dr. Frankel, you would see significantly larger confidence intervals. They would be much, much wider.

Q. Jeff, could you give me the ELMO for a moment, please.

You were asked by Mr. Olaniran about the reference guide and "don't know" options. I just wanted to ask you about another quote from page 391 of the reference guide. "Recent research on the effects of including a 'don't know' option shows that quasi-filters as well as full filters may discourage a respondent who would be able to provide a meaningful answer from expressing it."

Can you explain what this means?

A. So this is exactly what I was alluding to when I was providing my answer, that when you give an explicit "don't know," respondents say: Oh, there's an easy way out of this task. I'm going to say "don't know."

And so they might have been quite capable of answering, but because you've explicitly offered them this approach, they take it.

JUDGE STRICKLER: It says on that same sheet that one solution is to instruct the respondents to not guess. Was that included in the Bortz survey?

THE WITNESS: I -- I do not believe there's any specific instruction with respect to guessing or not guessing.

JUDGE STRICKLER: Thank you.

BY MR. LAANE:

Q. You were asked about your review of prior -- of testimony from prior proceedings on the constant sum survey being an established and appropriate methodology for the Bortz survey.

Can you tell us whether or not that

remains true as of today, that the constant sum survey is an accepted and appropriate methodology for the survey?

A. Yes. And the only reason I cited to that literature is that literature or those citations were in the record with respect to the constant sum use in these particular hearings. There certainly are robust empirical literature that has data on the use of constant sum questions in, you know, 2000 through 2017.

Q. Thank you.

MR. LAANE: I have nothing further.

JUDGE BARNETT: Any questions from the bench? Okay. Thank you. We will be at recess for 15 minutes. Recess for 15 minutes.

And thank you, Professor Mathiowetz. You may be excused.

THE WITNESS: Thank you.

(A recess was taken at 2:40 p.m., after which the trial resumed at 3:03 p.m.)

JUDGE BARNETT: Good afternoon. All but the witness please be seated.

Whereupon--

MARCI BURDICK,

having been first duly sworn, was examined and

testified as follows:

JUDGE BARNETT: Please be seated.

MR. STEWART: Thank you, Your Honor.

JUDGE BARNETT: Mr. Stewart?

MR. STEWART: First I would like to thank the parties and the Judges for accommodating our witness' schedule issues. She has got work commitments tomorrow morning and elsewhere and will be traveling in the following week.

And the parties agreed that we could present our first witness out of order.

But I wanted also to alert the Judges that we have gotten informal cross-examination estimates that total an hour and 40 minutes. So we're going to do a lightning round version of our direct testimony to accommodate our colleagues here, but we may have another bridge to cross at 4:30.

JUDGE BARNETT: Thank you.

DIRECT EXAMINATION

BY MR. STEWART:

Q. Please state your name.

A. Marci Burdick.

Q. What is your current employment?

A. I am Senior Advisor to Schurz Communications located in South Bend, Indiana.

JUDGE FEDER: Could you spell your name for the record, please?

THE WITNESS: Yes. It's M-a-r-c-i, B-u-r-d-i-c-k.

BY MR. STEWART:

Q. During 2010 to '13, what media properties did Schurz Communications own?

A. Schurz Communications owned radio stations, television stations, cable systems, and newspapers.

Q. Now, how long have you personally been in the broadcasting industry?

A. Since right after I graduated from high school for the next 42 years.

Q. Okay. And over that course of time, what positions have you held?

A. I started on the news side as a weather and then news anchor and reporter, and then I became a news director, television station general manager, vice president of television for our company, and then senior vice president of the Electronic Division, which in our world was radio, television and

cable.

Q. Okay. And have you also been active in broadcast industry organizations?

A. I have.

Q. Which organizations?

A. I have been active in several, including the National Association of Broadcasters where I served on the board, the Executive Committee, and as chairperson of the television board.

I have been active with the Radio Television News Directors Association, and served as a board member and chairman.

And I have been active with the NBC affiliate associations, where I was chairman, as well as a board member; the Carole Kneeland Association For Responsible Journalism, where I'm a board member.

Q. And based on your experience in the industry, are you knowledgeable about the kinds of programming that commercial television stations produce?

A. Yes.

Q. Have you also had experience -- you mentioned being president of the Electronic

Division involving cable television -- have you had experience in that connection with cable television?

A. Yes.

Q. And what is the nature of that experience?

A. Well, from 2003 to 2012, the general managers of the cable systems reported to me. We operated in a very decentralized and autonomous way. So I supervised basically their economic and strategic plan performance.

And then in 2012 we named a vice president of cable, and he reported to me.

Q. Now, Ms. Burdick, what were you asked to do in this proceeding on behalf of the Commercial Television Claimants?

A. I was asked to talk about the locally-generated programs that commercial television stations would do, in addition to talking about distant signals.

Q. And I have -- I have put in front of you a copy of what has been admitted into evidence in this case as Exhibit 2003.

A. Um-hum.

Q. Is that your written statement?

A. It is.

MR. STEWART: Your Honor, we proffer Ms. Burdick as an expert in commercial television broadcasting.

JUDGE BARNETT: Hearing no objection, Ms. Burdick is so qualified.

MR. STEWART: Thank you.

BY MR. STEWART:

Q. So, Ms. Burdick, would you first describe generally the kinds of programs that commercial television stations produce for broadcasts in their home markets?

A. On a daily basis, local stations primarily produce local news. It would be at various day parts, morning, mid-day, late afternoon, early evening, late evening.

Those newscasts would consist of both hard news, feature news, consumer news, medical news, about the local as well as the regional area.

Local weather reports on both a regular and an emergency basis. It would also consist of local sports, covering local sports or college teams of local and regional interest.

But, in addition, local stations also produce content in a specialized way or special programs that may surround local sporting events or college teams with pre- and post-coaches shows, game day coverage around the sporting event itself.

Weather coverage on a severe basis could be wall-to-wall weather coverage, could be special coverage.

During political seasons, debates, additional political coverage, or programs of community concern, whether that be a telethon to support fund-raising after a local community disaster or a parade or a local basketball game, those kind of programs.

Q. Now, you say at the beginning of paragraph 7 on page 3 of your statement that these programs "help define the unique identity of each station distinct from other stations."

What did you mean by that?

A. In our company we used to ask our operators to be able to say what they're famous for in terms of their local content. And that content is different station-to-station in every market. It might be, as an example, a

station with a lighter life-style form of coverage in the news.

It might be a hard news and investigative station. It might be a station that focuses on the seniority and longevity of its anchor team and reporters. Nonetheless, it is different station-to-station and it forms their mission, their branding, and their marketing statements.

Q. Now, let's talk a bit about the specific examples of station-produced programs you describe.

Let's turn first to Exhibit -- what has been marked as an attachment to your Exhibit 2003, Burdick Exhibit A-1, which is a map.

Do you see that?

A. I do.

Q. Could you describe -- first of all, where did this map come from?

A. This map was produced by Dr. Bennett using data from CDC, or the Cable Data Corporation.

Q. And Dr. Bennett is another CTV witness who will be appearing next week.

And just describe for us generally what is shown on this map?

A. Well, as it is labeled, it is Form 3 subscriber groups receiving WSBT as a distant signal in 2012. And its components, the X is WSBT, which was the then Schurz-owned CBS affiliate in South Bend, Indiana.

The yellow is its Designated Market Area, or DMA for short, which is the area that Nielsen defines and rates as the South Bend market.

The other colors around that are the adjacent other market areas. The circle is a 150-mile radius around WSBT. And the red dots are those cable communities that import WSBT as a distant signal.

Q. Okay. Now, what kinds of programs did WSBT produce during 2010 to '13?

A. Well, as I mentioned, they produced a full complement of daily news, which in WSBT's case was two hours in the morning, half hour mid-day, 90 minutes in the afternoon through early evening, and a half an hour late evening at 11:00 o'clock.

In addition to that in that time

period, as you might imagine being in South Bend, Indiana, coverage is all things Notre Dame. And so WSBT also produced a significant complement of Notre Dame sports coverage.

Q. Now, do you have a view, Ms. Burdick, about whether those programs that you just described are likely to have had value to the cable operator that carried the station as a distant signal in the number of its communities that are shown on Exhibit A-1?

A. I have a view.

Q. What is that view?

A. I think that locally-generated content is important and interesting to those cable subscribers in those communities.

Q. What do you base that view on?

A. Well, if you look at the map, I think it is illustrative that the cable system, the MVPD of which these communities are a part, the large MVPD stretches from Champaign, Illinois in a swath all the way up to and including Michigan.

But those counties are obviously on the Indiana side of their system. Those are Indiana voters. They are Indiana taxpayers.

They would have a high degree of interest in Indiana news that would come out of WSBT versus the CBS station in Illinois.

You know, and additionally I would point out WSBT is well-known for its weather coverage. That area, it's interesting to me, and anybody who has ever lived in Chicago, that's the tip of Lake Michigan that gets an effect called lake effect snow, which can be a dumping of snow in a very narrow geographic band.

So I think that's important to those people as well.

Q. Before we leave this exhibit, you, yourself, are a cable subscriber; is that correct?

A. I am.

Q. And is Comcast, the same Comcast system, your cable provider?

A. It is.

Q. Where is your system?

A. If you go straight north of that X on to the state line and draw another X, my home straddles the state line. The front part of it and the house is in Michigan. So I am a Niles,

Michigan resident. My backyard is in Indiana.

Q. And on your cable service, how many television stations either local or distant are from Michigan?

A. One.

Q. And is it a distant signal?

A. It is.

Q. And from your perspective, is that an important signal to have?

A. It is.

Q. Why?

A. Yeah. I'm a Michigan voter. I'm a Michigan taxpayer. It is my sole source, other than the Internet, of information on those issues in Michigan.

Q. Okay. Let's take a look at one other example, your Exhibit A-2.

Now, this map has similar elements, and what does it show that's different from A-1?

A. Yeah, same 150-mile radius. This is WDBJ, Roanoke, Virginia market. WDBJ is on the Roanoke side of the Roanoke/Lynchburg market as evidenced by the X. Yellow is its DMA or its market.

JUDGE BARNETT: Did you pick this because it's my hometown?

THE WITNESS: Is it your hometown? Do you know WDBJ?

JUDGE BARNETT: Oh, yes.

THE WITNESS: Okay.

MR. STEWART: Oh, my.

THE WITNESS: Well, then good, you probably know more about this than I do.

JUDGE BARNETT: It has been a long, long time.

THE WITNESS: So the counties around it are the other adjacent markets. And then there are three colors of dots here, which are three separate MVPDs, and their systems which import WDBJ as a distant signal.

BY MR. STEWART:

Q. And so there are some of those dots that are even farther than 150 miles from WDBJ.

Is it your view that the programming on WDBJ would have interest even there?

A. They are still in Virginia. I think for the same reason, Virginia voters/Virginia taxpayers.

Q. And so what kind of programming does

WDBJ provide during this 2010 to '13 period?

A. In addition to the same full complement of local news that I provided, I think it is important to point out WDBJ's case.

As you probably know, they have been a historic number 1 station for years and years and years in the market.

And, in addition to the normal kinds of daily news coverage they do, they are the only station or were at that point in time to staff the Virginia legislative session and cover it on a daily basis. They did special programming related to that. The Governor's inauguration is an example.

But they also are a prime station to carry Virginia Tech sports and do a significant amount of coverage around Virginia Tech sports. I think in that period of time they actually went to a bowl game.

Q. I am a graduate of the University of Virginia, and I can't imagine anybody being interested in that.

(Laughter.)

BY MR. STEWART:

Q. So let's just go to the last question

that I asked you on your direct.

First of all, your Exhibit A-3 shows similar examples for another market; is that right?

A. Yes, Springfield, Missouri.

Q. Let's not go through that in detail. That's in your testimony itself.

But I want to turn now to the -- to the Schurz-owned cable system in Hagerstown, Maryland. It's called the Antietam system; is that correct?

A. Yes.

Q. Now, can you tell us what distant signals Antietam cable -- I'm sorry, did Antietam cable carry WJZ from Baltimore as a distant signal 2010 to '13?

A. It did.

Q. Why did it do that?

A. WJZ provides a high complement of sporting news out of the Baltimore teams, the pro teams, the Ravens and the Orioles specifically. They provide a large degree of local coverage, pre- and post-game coverage, daily news coverage about those teams.

That is important to the consumers in

Hagerstown, Maryland. But also Hagerstown is part of the Washington, D.C. DMA. Like the other examples I have cited, Maryland voters have an interest in Maryland news, and so that's important to our customer base.

And, thirdly, there is a significant amount of commuting that goes into Baltimore, largely for air service.

So on a daily basis, our customers are also interested in traffic, weather, that kind of thing.

Q. That system is located in Maryland. Doesn't it have a lot of Maryland stations available to it?

A. It is part of the Washington DMA.

Q. And what kind of -- what stations does it have, does it offer its subscribers?

A. In the Washington DMA?

Q. Yeah.

A. It has all of the Washington commercial and non-commercial stations in the system, and then WJZ out of Baltimore is a distant signal.

Q. Okay.

MR. STEWART: I have no further

questions at this time. Thank you.

JUDGE BARNETT: Thank you, Mr. Stewart. Cross-examination?

MS. DOMINIQUE: Good afternoon, Your Honors.

CROSS-EXAMINATION

BY MS. DOMINIQUE:

Q. Good afternoon, Ms. Burdick.

A. Good afternoon.

Q. I am also from Michigan so I will greet you like this (indicating).

My name is Alesha Dominique, and I represent Program Suppliers. I am going to ask you a few questions about your oral and written testimony today.

Ms. Burdick, Schurz Communications owned three cable systems between 2010 and 2013 inclusive, correct?

A. Correct.

Q. And Schurz also owned several broadcast stations during that time period as well?

A. Yes.

Q. So during that time period, 2010 through 2013, Schurz owned both broadcast

stations and cable systems, correct?

A. Yes.

Q. Were the broadcast stations affiliated with any networks, so ABC, CBS, NBC?

A. They were.

Q. Ms. Burdick, in your various roles at Schurz, have you been at one point in time responsible for the company's broadcast operations as well as its cable operations?

A. Yes.

Q. Let's talk about your work with the broadcast stations that Schurz owned.

Were you the person who would have been responsible for acquiring programs for broadcast stations?

A. No. May I correct that?

Q. Sure.

A. When I served as a general manager at WAGT from 2000 to 2002, I was responsible for acquiring programs for WAGT in Augusta. But those decisions in our company were made at the local level by our operators.

Q. Did you supervise the operators who were then in charge with acquiring programs?

A. Yes.

Q. So based on your experience and your supervisory role, do you know how programming decisions are made by broadcast stations when it comes to acquiring content?

A. I do.

Q. Now, you testified about the kinds of CTV programs Schurz' broadcast stations produced in 2010 through '13.

A. Um-hum.

Q. Did these broadcast stations also acquire programming that they did not produce themselves during that time period?

A. Some.

Q. Okay. Did this acquired programming include non-network programming?

A. Yes.

Q. Did the non-network programming include syndicated series and perhaps movies?

A. Yes.

Q. When Schurz' broadcast stations sought to acquire programming, such as syndicated series or movies, did the broadcast stations negotiate directly with the sellers of those programs?

A. Yes.

Q. In your written report you testified about the value of programming on distant signals.

What do you mean when you use the word "value"?

A. I mean what I believe is important to consumers and what is important to the system.

Q. When Schurz' broadcast stations negotiated with sellers of syndicated programming, did the stations consider the value, as you have defined it, of a program in deciding whether to acquire the program?

A. Yes.

Q. What factors did they consider in determining the value of a syndicated program?

A. In my case as a general manager, I would consider what I believed was the composition of my market, the interest in viewing that program, the cost of that program relative to my station's economic situation, the attractiveness to advertisers, the ability to sell advertising in that program. Those would be some factors.

Q. So in determining value -- and maybe this was captured in your recitation -- would

the broadcast stations consider the anticipated audience size that would watch a particular program?

A. Yes.

Q. And in the case of a syndicated program, would the broadcast stations, were they likely to infer from the program's performance on-network whether it would be a popular syndicated program in an off-network market?

A. Well, we would certainly hope that would be the case, yes.

Q. And I think you also just testified to this.

Did your broadcast stations also consider the audience demographic in determining value?

A. Yes.

Q. What about day parts, did day parts factor into determining the value of a program to be acquired?

A. Where it could be aired in terms of day parts?

Q. Correct.

A. Yes.

Q. In your direct testimony you stated that your work in the television industry included direct experience with advertising sales and purchasing, correct?

A. I never sold advertising, but I did oversee the process, yes.

Q. So in overseeing the process, were you directly involved in or did you sort of supervise the sale of ad spots that are within the programming that airs on broadcast stations?

A. I supervised the general sales managers who supervised that process, yes.

Q. Did Schurz' broadcast stations have national ad sales?

A. We did.

Q. And -- and what about local ad sales?

A. Yes.

Q. When your general managers negotiated with buyers of ad spots, what factors were considered in determining the price that the broadcast stations were willing to accept from an ad spot buyer?

A. Largely ratings, what demographic they were buying, what was the rating in share in

those programs that is attributable to the station or the program, scarcity, how many spots are available.

If there were fewer spots, they might be worth more money than a program where there are more spots, kind of thing.

JUDGE BARNETT: Ms. Burdick, when you say ratings, are you referring to Nielsen's viewing ratings?

THE WITNESS: Yes.

BY MS. DOMINIQUE:

Q. So, Ms. Burdick, would you agree that broadcasters care about viewing?

A. Yes, broadcasters care about viewing.

Q. Let's talk about your work on the cable operator side of Schurz' business operations.

A. Um-hum.

Q. So I believe you just testified that during the 2010 through '13 time frame, Schurz owned three cable systems?

A. Correct.

Q. One in Maryland, one in Arizona, and one in Florida, correct?

A. Correct.

Q. Were you the person responsible for programming decisions for those cable systems?

A. No.

Q. Okay. And who was?

A. The general managers of each system were responsible for their programming decisions.

Q. And did you oversee those general managers or otherwise supervise them?

A. I did.

Q. Okay. And so are you generally aware of how programming decisions are made by Schurz' cable systems?

A. I am.

Q. And specifically do you know how programming decisions are made by Schurz' cable systems as it relates to distant signal carriage?

A. I do.

Q. Let's talk about those programming decisions.

When Schurz makes a programming decision about whether to carry a distant signal, it is usually a decision about whether to carry a broadcast station in its entirety,

correct?

A. It is a decision about carrying a broadcast system in its entirety, recognizing that we are often not able to air all of the programs in a 24/7 basis. So we have to determine what programming is of interest.

Q. Are you able to excise the programming that is not of interest?

A. We are required, in the case of the map we showed with WSBT, those systems that import WSBT as a distant signal are required to black out network programming and syndicated programming that would be contractually exclusive in the Chicago market.

The same would be true of our system.

Q. Does Schurz' cable system -- do Schurz' cable systems license individual programs on broadcast signals?

A. No.

Q. And they don't license categories of programs on broadcast signals?

A. I don't know what you mean by categories of programs.

Q. Okay. Are you aware of the distant programming categories at issue in this

proceeding?

A. I am not.

Q. Let's say, for example, maybe use our category of programming, do Schurz' cable systems license movies on broadcast signals?

A. No.

Q. Ms. Burdick, would you agree that subscriber retention is very important to Schurz' cable systems?

A. Yes.

Q. In order to retain subscribers, it is important for Schurz' cable systems to provide programming that their subscribers want to watch, isn't it?

A. Yes.

Q. Is it fair to say that most people who sign up for cable through your systems do so because they want to watch the programs that are provided by your cable systems?

A. That are important to them, yes.

Q. And I believe in your written testimony you stated that the three cable systems that Schurz owns are small?

A. They are.

Q. What do you mean by "small"?

A. Well, I mean the communities are not large communities. The cable industry is increasingly consolidated and large.

And our systems, we had three standalone, separate systems in relatively smaller markets. That's what I mean.

Q. And given their size, is it correct to say that Schurz' cable systems must continuously evaluate the cost/benefit of channel carriage?

A. Sure.

Q. In order to determine whether the benefits of carrying a channel outweigh its cost, what factors does Schurz consider?

A. You know, I bet if you asked all three of our general managers, you might get different answers to that question.

So in general I would say what are -- what is the unique and compelling content on each of those signals and what is the interest to that market or to the consumer in that market.

Q. Do you have a sense for how consumer interest may be measured?

A. In general or --

Q. In a particular market.

A. I do.

Q. And can you describe that?

A. Generally in our cable systems, we rely on -- we're talking about Antietam specifically. We do purchase the Nielsen diary for the Washington, D.C. market.

In addition, we have set-top box data that we review cumulatively.

And, thirdly, and uniquely, I think, to Schurz, we still operate local customer call centers or did at that period of time, so could record and were aware of inquiries and questions from our customer base.

Q. Given the size of Schurz' cable systems and the need to continuously evaluate the cost and benefits of channel carriage, is it safe to assume that Schurz cable systems would not continue to carry channels if their subscribers don't watch the programming available on the channels?

A. Well, I think that's a loaded question because I don't know how you view that as don't watch and how we view that as don't watch.

In general, I think we know from

industry studies that any cable customer will watch about 12 to 15 channels in a given day or week. They have 12 or 15 channels that they prefer.

And my 12 or 15 might be different than your 12 or 15 or might be different than my husband's 12 or 15. So we try to maintain a complement and a wide complement of programming.

Q. All of Schurz' cable systems carry distant signals during 2010 through '13?

A. Yes, I believe that's correct.

Q. And the Hagerstown-based cable system distantly retransmitted a broadcast station from Baltimore called WJZ, I think you just testified about orally?

A. Yes.

Q. You have testified in your written report that WJZ produces Baltimore-based news and sports programming, which are of important value -- and I quote important value -- to your subscribers.

How does Schurz measure the value of programming to its cable subscribers?

A. Yeah, as I think I said, we have both

Nielsen data and then we have set-top box data that we will look at.

Q. So WJZ also airs non-network programming that includes syndicated series and movies, correct?

A. I believe that's correct, yes.

Q. Okay. And, of course, Schurz' hope, your cable system's hope, is that either cable subscribers want to watch all of the programming that is being offered, correct?

A. Well, we know they can't watch all the programming that's being offered because it will have to block out the duplicated network or the protected syndicated programming.

So that leaves primarily locally-produced content or non-protected syndicated programming.

Q. Ms. Burdick, does the blackout requirement apply to broadcast stations nationwide?

A. If they are imported as a distant signal. Is that what you are asking me?

Q. Yes.

A. The -- the rules of importing a distant signal, as I understand it, apply

nationwide. So if WSBT in South Bend is imported as a distant signal, the Chicago stations have contracted exclusivity for network and certain syndicated programming.

Conversely, in Baltimore, if Hagerstown imports it as a distant signal, the Washington, D.C. affiliate would have network and some syndicated programming exclusivity.

Q. Thank you, Ms. Burdick.

MS. DOMINIQUE: I have no further questions.

THE WITNESS: Thank you.

JUDGE BARNETT: Counsel, I think you are going to have to tilt the mic down a little bit.

MS. NYMAN: Can you hear me?

JUDGE BARNETT: Yes.

CROSS-EXAMINATION

BY MS. NYMAN:

Q. Good afternoon, Ms. Burdick.

A. Hi.

Q. My name is Jessica Nyman, and I represent the Devotional Claimants in this matter.

A. Um-hum.

Q. I am going to ask what seems like basic questions to you but education for the rest of us.

But if a cable system wants to retransmit a broadcast station's signal, it must first receive that signal somehow, correct?

A. Correct.

Q. And given your experience in the broadcast and cable industry, you're familiar with the concept of a broadcast station's signal contour, correct?

A. Yes.

Q. And would it be accurate to describe that as the broadcast service area?

A. Yes. Sometimes the signal will extend out of that, but generally not.

Q. And I think what you are referring to there is that a broadcast station's signal contour is not limited by DMA, correct?

A. That's correct.

Q. All right. And in order to receive a broadcast station's signal over-the-air with an antenna, i.e., not through the cable system, you would have to be within the station's

signal contour; is that correct?

A. Correct.

Q. And if a cable system is within a station's signal contour it, too, can receive that signal over-the-air, correct?

A. Yes.

Q. But if a viewer or a system -- sorry, if a cable system is outside of the signal contour, it needs to find an alternate method of receiving that signal; is that correct?

A. That's correct.

Q. And are you familiar with the alternate delivery methods that are available to the cable system to receive a signal?

A. At a very high level.

Q. We're going to keep it at a high level.

A. Good.

Q. But you are familiar with, you know, fiberoptic cable being an option?

A. Yes.

Q. Microwave relay services being an option?

A. Yes.

Q. Okay. And would it be fair to say

that, as the distance increases between a station and a cable system, you are going to need more of that fiberoptic cable?

A. Correct.

Q. Or you are going to need more microwave relays to hop the signal along to where you can get it, right?

A. That is correct.

Q. Signal delivery is typically negotiated between the broadcast station and the cable system; is that correct?

A. That's correct.

Q. And that would apply both on a local and a distant basis?

A. That's correct.

Q. And that would usually take place in a retransmission consent agreement; is that correct?

A. Yes.

Q. And have you ever reviewed or negotiate a retransmission consent agreement?

A. I have.

Q. In these agreements is it typical for the cost of signal delivery to fall on the cable system?

A. No, it is generally the responsibility of the broadcaster to deliver its signal, in my experience, to the cable system.

Q. Would that be both for -- the station to broadcast a good quality signal over-the-air and also if the cable system can't receive the station over-the-air, you are saying the cable -- the broadcast station would pay the -- would pay to get the signal to the cable system?

A. You're asking me about my experience. And in my experience in Schurz, it has generally been the responsibility of the television station to get a quality signal to the cable head end.

Q. And when you say the responsibility of the station, do you mean that in the sense of the station must cooperate with the cable system to provide a quality signal at the cable operator's request?

A. So all of those retransmission consent negotiations are different. That may be how it ends up. It may be that it ends up that it is entirely a broadcaster obligation.

It may be that it is a -- I can't think, I can't think of a circumstance of which

I'm aware where the sole responsibility lies on the cable provider, when it is a negotiated -- negotiated item.

Q. Okay. And maybe responsibility is a bit of a vague term.

As far as the cost of receiving that signal goes, for example, if fiberoptic cable needs to be used to get a signal or a cable relay service needs to be used, would it be typical for the cable operator to pay for the fiberoptic cable or to pay for the cable relay service?

A. I am hesitant to agree to anything being typical in a retransmission consent negotiation because, in my experience, they are all different.

Q. Understood. With regard to the Schurz stations that were broadcast -- that were retransmitted on a distant basis in 2010 to 2013, did the Schurz stations pay to get their signals to the distant cable systems?

A. You know what, I do not know the answer to that.

Q. For the Hagerstown cable system, does it pay to receive -- in 2010 to 2013, did it

pay to receive the signal from WJZ in Baltimore?

A. And I don't know the specifics of that either. I'm sorry.

Q. Okay. But we can agree, though, that whoever pays the cost, as you get further away that the cost is likely to increase, is that correct, based on what you testified a second ago, which was that you are going to need more cable or more microwave relays the further away you get?

A. Yeah, it depends on where the station is. It depends on where the cable system is.

Q. And would it be fair to say that, while there is no typical retransmission consent agreement, if the signal delivery provision gives the burden of paying for signal delivery to the station, they may expect to have higher retransmission consent fees from the cable operator or some other ask in order to exchange for the cost that they would --

A. Yeah, everything is negotiable.

Q. Okay. And cable systems use subscriber groups; is that correct?

A. Yes.

Q. Why do cable systems use subscriber groups?

A. Again, I know at a very high level. They use subscriber groups to direct programming to areas in which the -- to manage the technical system and to direct programming to the desirable consumer.

Q. And --

A. Desired consumer.

Q. And would it be the case some of the time or most of the time that a signal that is retransmitted on a distant basis is distant to some subscribers but local to other subscribers within the cable system?

A. Yes.

Q. And that was the case, for example, with Antietam cable in Hagerstown, the Baltimore signal was local to some of its subscribers but distant to others, right?

A. A very small part, yes.

MS. NYMAN: No further questions.

THE WITNESS: Thank you.

CROSS-EXAMINATION

BY MR. HUNZIKER:

Q. Good afternoon, Ms. Burdick. My name

is Rob Hunziker. I represent the Public Television Claimants.

A. Hi.

Q. So I want to talk a little bit more about Hagerstown that you focused in on earlier.

The Schurz station in Hagerstown is Antietam cable, right?

A. Schurz system, yes.

Q. Schurz system. Excuse me. And you talked a little bit about some of the distant stations they carry.

What -- in general, what Public Television stations did that system carry?

A. I don't have the full program line-up in front of me, but from my memory, which is a dangerous thing, they carry Maryland Public Television and, in addition, and some of its sub-channels, and they carry WETA out of Washington, D.C. and some of its sub-channels.

Q. And wouldn't some of that have been carried on a distant basis?

A. I -- I think that's true. I think part of WETA, like WJZ in part of the system would be a must carry, and then it is a distant

signal in other parts of the system.

Q. And which station did you say again?

A. WETA.

Q. Okay.

A. I believe. I could be wrong about that but that's my memory.

Q. So would you be surprised to learn then that the station would have paid cable royalty fees that year or that set of years?

A. You mean the Hagerstown system?

Q. Right.

A. I am aware that they paid cable royalties.

Q. For WETA?

A. Yes. I am aware of that.

Q. Okay. And you mentioned that there were multiple Public Television stations that the system carried. And I believe you mentioned that one of the reasons for that is because Hagerstown is a commuter market, right?

A. Yes.

Q. Let me step back. You did describe Hagerstown as a commuter market for Washington, D.C.?

A. For both Washington and Baltimore,

yes.

Q. Okay. And as a commuter market, some of the people that live in the Hagerstown area or surrounding areas that are commutable to Washington, D.C., those potential audience members would be interested in Washington-focused programming, right?

A. Yes.

Q. So Washington news or public affairs and that kind of programming?

A. Yes. Hagerstown is in the Washington DMA, yes.

Q. And Hagerstown is also just right on the border of Pennsylvania, right?

A. Correct.

Q. And so it would still be commutable from, say, just across the border in Pennsylvania?

A. Our experience is that commuters are going generally to D.C. or Baltimore for employment or for airline travel, primarily. Hagerstown has almost no airline service.

Q. Okay. But the greater Hagerstown area, there are a lot of people that commute to D.C. and would be interested in D.C.

programming?

A. Correct.

Q. Okay. So those folks that commute and are interested in D.C. programming might be interested in a series that spotlights goings on or special places in the Washington, D.C. area?

A. They could be.

Q. All right.

MR. HUNZIKER: I have no further questions. Thank you.

THE WITNESS: Okay.

JUDGE BARNETT: Thank you, Mr. Hunziker. Other questions? Redirect, Mr. Stewart?

MR. STEWART: Yes.

JUDGE BARNETT: You see it can be done, gentlemen and ladies. It can be done.

MR. STEWART: Well, I'm -- now that they have all gone less than their estimates, I can finish the rest of my direct. I'm not going to do that.

(Laughter.)

REDIRECT EXAMINATION

BY MR. STEWART:

Q. I just have a few questions, Ms. Burdick.

Ms. Dominique asked you about the use of viewing data by the cable system, by Antietam cable. Now -- and you talked about set-top box data.

A. Um-hum.

Q. Did the cable system in deciding which channels to carry or drop use viewing data that reflected how much viewing was done to different programs on the distant signal or on any channel?

A. So on the cable side, unlike broadcast, we are less interested in specific programs than we are cumulative viewing to a channel because that's what we contract for, a channel, not a specific program like we would on the broadcast side.

Q. And what do you mean by "cumulative viewing"?

A. So total viewing to the total number of subscribers that would view that channel.

Q. Okay. So just to be clear, if a cable household watched a particular channel, any programs on the channel for ten hours or one

hour, how would that affect how they were counted in this cumulative rating?

A. Oh, you know, John, I don't really know that I know the specific answer of how Antietam uses that.

My conversations with Antietam were over a period of time, and let's say a year, they would look at their top 50 or top 60 viewed channels to make decisions in viewing, not a specific program in that channel.

Q. And was the top 50 in viewing based on the number of different households that viewed the particular channel?

A. Yes. Yes.

Q. And not the relative amounts of viewing --

A. Correct. Correct. I understand what you're saying -- what you're asking now. I'm sorry.

Q. And you talked about the unique programming, about when the cable system is deciding what distant signals to add or drop, looking for unique programming that was of interest to the community. Is that correct?

A. Yes.

Q. Mr. Hunziker asked you about WETA. First, he asked whether subscribers in Hagerstown would be interested in D.C. programming. Do you remember that?

A. Yes.

Q. Do they get any D.C. programming on must-carry signals?

A. Yes, they get all of the Washington commercial television stations.

Q. Okay. And now turning to WETA, Hagerstown already had a local PTV affiliate, is that right, PBS affiliate?

A. Yes. And for clarification, it is not in Hagerstown proper. It is a Maryland public TV.

Q. Okay. So to the extent that this other PBS -- PTV signal that was already carried by the system carried PBS network programming, would PBS network programming on WETA from Washington be the kind of unique programming of interest to the community that you were referring to?

A. Yes, I would say that Antietam's primary interest was the unduplicated PBS programming that WETA would uniquely provide.

And I think we all know that they are renowned for the kind of programming they produce.

Q. Could we, Bob, could we have Exhibit A-2?

And so this is the map of the Roanoke market and the places where WDBJ was carried as a distant signal; is that correct?

A. Yes.

Q. Now, and are there mountains in this -- they're not on this map but are you aware of where the mountains run here?

A. I am. The Judge can probably describe it better. The Roanoke-Lynchburg market is divided by mountains. I don't know where they extend into West Virginia.

Q. So WDBJ is -- the cable systems off to the left of this map are on the other side of mountains from Roanoke, are they not?

A. Right.

Q. Okay. And finally, would WDBJ have viewing information in that dark blue -- from that dark blue DMA available to it?

A. No.

Q. Would cable systems in that dark blue DMA -- well, first of all, this, the cable

system that shows with the pink dots, which is TNK, is that another sort of sprawling system?

A. I believe it is. I'm not specifically aware of that, where that system leads you.

Q. TN means Tennessee; do you know that?

A. Oh, yeah, okay, I see that down at the bottom. I had forgotten that, yeah.

Q. Okay. So, but in any event --

A. Tennessee, Georgia, Virginia, yeah.

Q. This broad cable system carries WDBJ as a distant signal only in these markets which are almost all --

A. Right.

Q. -- in the State of Virginia itself; is that right?

A. Yes.

Q. Okay.

MR. STEWART: And that's all the questions I have. Thank you.

JUDGE BARNETT: There are quite a few mountains. And just across the border is West Virginia. We used to joke that if you flattened out West Virginia, it would be bigger than Texas. So lots of mountains.

Any further questions for this

witness? From the bench? No.

Thank you, Ms. Burdick. You may be excused. Thank you for coming in to see us.

THE WITNESS: Yes.

JUDGE BARNETT: Do we have any other witnesses for today?

MR. GARRETT: When we heard the estimates of cross-examination, we sent them all home, Your Honor. But we will have three available tomorrow, if we get to all three.

JUDGE BARNETT: I have now seen efficiency at work, and I expect it tomorrow, yes. And who will be up tomorrow?

MR. GARRETT: Tomorrow we have Mr. Singer will go first, and then depending how long he goes, it will be Mr. Harvey or Mr. Hartman will follow.

JUDGE BARNETT: Okay.

MR. GARRETT: Those could be switched, but all three will be available tomorrow.

And, Your Honor, I should note that we got an e-mail while we were here today about our witness for Monday who apparently has now contracted Influenza B. I don't know whether Influenza B is the good one or the bad one or

what.

JUDGE BARNETT: I don't think there is a good one.

MR. GARRETT: But we're still planning and hoping that he will testify on Monday and, if not, we will have to try to shuffle the schedule.

JUDGE BARNETT: Perhaps tomorrow you will have more information and someone else in the room can slide in a more local witness in case your witness needs more recuperation time.

MR. GARRETT: Thank you, Your Honor.

JUDGE BARNETT: Thank you, all. We will be then at recess until 9:00 o'clock in the morning.

(Whereupon, 3:56 p.m., the hearing recessed, to reconvene at 9:00 a.m. on Thursday, February 22, 2018.)

C O N T E N T S

AFTERNOON SESSION: 848

CONFIDENTIAL SESSIONS: NONE

E X H I B I T S

EXHIBIT NO:	MARKED/RECEIVED	WITHDRAWN
3011	749	

CERTIFICATE

I certify that the foregoing is a true and accurate transcript, to the best of my skill and ability, from my stenographic notes of this proceeding.

2-21-18 Josh Stidham
Date Signature of the Court Reporter

2-21-18 Lea Boynton
Date Signature of the Court Reporter

Q

R

S

T

U

V